

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE DISTRICT OF RHODE ISLAND  
3  
4           \* \* \* \* \*  
5   ARENDI USA, INC., ET AL.           \*   C.A. 02-343T  
6           VS.                           \*   10:00 A.M.  
7                                       \*   SEPTEMBER 20, 2004  
8   MICROSOFT CORPORATION, ET AL.   \*  
9                                       \*   PROVIDENCE, RI  
         \* \* \* \* \*

10                   BEFORE THE HONORABLE ERNEST C. TORRES  
11                                       CHIEF DISTRICT JUDGE  
12                                       (JURY TRIAL)

13  
14   APPEARANCES:  
15  
16   FOR ARENDI U.S.A. INC:  
                                  MINTZ, LEVIN, COHN, FERRIS,  
17                                   GLOVSKY & POPEO, PC  
                                  BY: PAUL J. HAYES, ESQUIRE  
18                                   BY: EUGENE A. FEHER, ESQUIRE  
                                  ONE FINANCIAL CENTER  
19                                   BOSTON, MA 02111  
20                                   TAYLOR, DUANE, BARTON & GILMAN,  
                                  LLP  
21                                   BY: SHERI L. PIZZI, ESQUIRE  
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22                                   PROVIDENCE, RI 02903  
23  
24  
25

BEST AVAILABLE COPY

1 FOR MICROSOFT CORPORATION:

2 FISH & RICHARDSON, P.C.  
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13

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23

COURT REPORTER: ANGELA M. GALLOGLY, RPR  
ONE EXCHANGE TERRACE  
PROVIDENCE, RI 02903

24

25

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1       SEPTEMBER 20, 2004 - 10:00 A.M.

2               THE COURT:   GOOD MORNING.   BEFORE WE BRING THE  
3       JURY IN, I BELIEVE THERE'S A PENDING MOTION IN LIMINE  
4       BY ARENDI TO PRECLUDE MICROSOFT FROM INTRODUCING THE  
5       COMMERCIAL EMBODIMENT OF ARENDI'S PATENTED INVENTION,  
6       PATENTED METHOD, SO THERE WAS SOME SOFTWARE, I BELIEVE  
7       THAT ARENDI COMMERCIALLY MARKETED.   DO YOU STILL INTEND  
8       TO OFFER THAT, MR. SCHERKENBACH?

9               MR. SCHERKENBACH:   I WOULD DO SO THROUGH  
10       CONTINUED CROSS-EXAMINATION OF MR. HEDLOY, IF ALLOWED  
11       TO DO THAT, YES.

12              THE COURT:   WELL, I'VE DECIDED I'M NOT GOING TO  
13       ALLOW THAT.   IT IS ALWAYS RISKY TO MAKE THESE RULINGS  
14       ON MOTIONS IN LIMINE, BECAUSE AS I'VE INDICATED, SO  
15       MUCH DEPENDS ON THE CONTEXT IN WHICH THE ISSUE ARISES,  
16       BUT BASED ON AT LEAST THE PRESENT SITUATION, I'M  
17       INCLINED TO -- I WOULD BE INCLINED TO SUSTAIN THE  
18       OBJECTION, BECAUSE THE COMMERCIAL EMBODIMENT REPRESENTS  
19       ONLY AN EXAMPLE OF THE PATENTED DEVICE.   AND WHAT THE  
20       JURY'S TASK IS GOING TO BE HERE IS TO COMPARE THE  
21       ACCUSED PRODUCTS, NOT TO EXAMPLES OF THE PATENTED  
22       INVENTION, BUT, RATHER, TO THE CLAIMS CONTAINED IN THE  
23       PATENT.

24              I THINK IT WOULD BE VERY CONFUSING TO THE JURY.  
25       I'M NOT CONVINCED THAT INTRODUCING THIS WOULD HELP THE

1 JURY IN ANY WAY TO UNDERSTAND THE PATENTED PROCESS,  
2 WHICH CERTAINLY WOULD BE A LEGITIMATE AREA OF INQUIRY,  
3 BUT I'M NOT CONVINCED THAT THAT WOULD HELP THE JURY IN  
4 ANY MEANINGFUL WAY TO UNDERSTAND THE PROCESS. AND  
5 WHATEVER VALUE IT MIGHT HAVE IN THAT REGARD, IT SEEMS  
6 TO ME IS OUTWEIGHED BY THE CONFUSION THAT IT WOULD  
7 CREATE IN DISTRACTING THE JURY FROM THE PRINCIPAL, ITS  
8 PRINCIPAL TASK, WHICH IS TO COMPARE THE ACCUSED PRODUCT  
9 TO THE CLAIMS IN THE PATENT.

10 I'M CONCERNED THAT THE JURY WOULD FOCUS ON  
11 DIFFERENCES BETWEEN THE ACCUSED PRODUCT AND THE  
12 EMBODIMENT AND NOT ON DIFFERENCES BETWEEN THE ACCUSED  
13 PRODUCT AND THE CLAIMS.

14 FURTHERMORE, I DON'T REALLY THINK THERE IS MUCH  
15 NEED FOR THIS EVIDENCE, BECAUSE IT IS CERTAINLY OPEN TO  
16 YOU, MR. SCHERKENBACH, TO PRESENT EVIDENCE FROM YOUR  
17 EXPERT OR OTHERWISE EXPLAINING HOW THE ACCUSED PRODUCT  
18 DIFFERS FROM THE CLAIMS OF THE PATENT. SO THAT'S ABOUT  
19 THE BEST I CAN DO FOR NOW.

20 I'LL GRANT THE MOTION IN LIMINE SUBJECT, AS  
21 ALWAYS, TO THE CAVEAT THAT IF THE CIRCUMSTANCES CHANGE,  
22 THEN THAT RULING IS SUBJECT TO BEING REVISITED. BUT AT  
23 THE PRESENT, I DON'T THINK THAT EVIDENCE WILL BE  
24 ADMISSIBLE.

25 WOULD YOU BRING THE JURY IN, PLEASE.

1 (JURY PRESENT)

2 THE COURT: PLEASE BE SEATED, LADIES AND  
3 GENTLEMEN, AND GOOD MORNING. I HOPE YOU ALL HAD A  
4 RESTFUL WEEKEND AND ARE PREPARED TO RETURN TO LISTENING  
5 TO EVIDENCE ABOUT SOFTWARE INFRINGEMENT.

6 MR. SCHERKENBACH, YOU MAY CONTINUE.

7 MR. SCHERKENBACH: THANK YOU, YOUR HONOR.  
8 PLAINTIFF'S WITNESS, DAVID KLAUSNER, PREVIOUSLY SWORN

9 CONTINUED CROSS-EXAMINATION

10 BY MR. SCHERKENBACH:

11 Q. GOOD MORNING, LADIES AND GENTLEMEN AND WELCOME  
12 BACK.

13 GOOD MORNING, MR. KLAUSNER.

14 A. GOOD MORNING, SIR.

15 Q. DO YOU RECALL LAST THURSDAY WE LEFT OFF TALKING  
16 ABOUT YOUR ANALYSIS OF THE ANALYZING STEP OF CLAIM 1;  
17 DO YOU JUST GENERALLY RECALL THAT SUBJECT?

18 A. YES.

19 Q. NOW, YOU AGREE THAT THE PROCESS OF RECOGNIZING  
20 SMART TAGS OCCURS AUTOMATICALLY WITHOUT ANY USER  
21 INTERACTION; TRUE?

22 A. YES.

23 Q. AND THIS RECOGNITION PROCESS LOOKS AT THE WORDS IN  
24 THE DOCUMENT, AND DETERMINES WHETHER ANY OF THOSE WORDS  
25 SHOULD BE SMART TAGS; TRUE?

1 A. YES, GENERALLY OR DATES.

2 Q. GENERALLY. SO, FOR EXAMPLE WHEN A PERSON -- WHEN A  
3 USER, EXCUSE ME -- TYPES IN A PERSON'S NAME, THE  
4 RECOGNITION PROCESS DETERMINES WHETHER WHAT WAS TYPED  
5 MAKES UP A PERSON'S NAME, AND THE PROGRAM WILL LABEL  
6 THAT AS A SMART TAG IF IT SAYS, YES, IT'S A PERSON'S  
7 NAME; TRUE?

8 A. GENERALLY, YES.

9 Q. NOW, YOU AGREE THAT THIS RECOGNITION OF A SMART  
10 TAG, THIS PROCESS REQUIRES AN ANALYSIS OF THE DOCUMENT  
11 TO DETERMINE IF IT HAS CERTAIN INFORMATION; RIGHT?

12 A. RIGHT.

13 Q. SO THERE ISN'T ANY DOUBT THAT BEFORE THE USER EVER  
14 SELECTS AN ACTION FROM THE SMART TAGS MENU, THAT THE  
15 SMART TAG TECHNOLOGY ANALYZES WHICH PART OF THE  
16 INFORMATION TYPED IS, FOR EXAMPLE, A USER'S NAME; TRUE?

17 A. TRUE.

18 Q. BUT IN YOUR INFRINGEMENT OPINION, THIS ANALYSIS  
19 THAT HAPPENS BEFORE THE SELECTION OF THE MENU ITEM IS  
20 IRRELEVANT TO YOUR ANALYSIS; TRUE?

21 A. TRUE.

22 Q. NOW, I WANT TO RETURN TO YOUR -- SOME OF YOUR CLAIM  
23 CHARTS THAT YOU USED ON THURSDAY, YOU RECALL THE BOARDS  
24 YOU PUT UP THAT HAD THE CLAIM LANGUAGE ON ONE SIDE AND  
25 YOUR ANALYSIS ON THE OTHER; DO YOU RECALL THOSE BOARDS?

1 A. YES.

2 Q. LET ME JUST, TO REFRESH EVERYBODY'S RECOLLECTION  
3 I'LL JUST PUT UP -- CAN I HAVE THE ELMO, PLEASE.

4 I TAKE IT THIS LOOKS FAMILIAR, MR. KLAUSNER?

5 A. YES.

6 Q. SO THIS IS THE FIRST, I THINK, THE VERY FIRST BOARD  
7 YOU PUT UP, WELL, RELATING TO CLAIM 1 ANYWAY; RIGHT?

8 A. YES.

9 Q. NOW, LOOKING AT -- I'M GOING TO HIGHLIGHT SOME  
10 THINGS AS WE GO ALONG HERE. LOOKING AT THE PREAMBLE OF  
11 CLAIM 1, ONE OF THE THINGS THAT PREAMBLE REFERS TO IS A  
12 DOCUMENT INCLUDING FIRST INFORMATION. DO YOU SEE WHERE  
13 I'VE HIGHLIGHTED THERE, "FIRST INFORMATION"?

14 A. I SEE IT.

15 Q. THAT COLOR DOESN'T WORK VERY WELL, LET ME TRY A  
16 DIFFERENT COLOR.

17 AND IN THE COLUMN THAT CONTAINS YOUR ANALYSIS,  
18 YOU GIVE THREE EXAMPLES OF WHAT THIS FIRST INFORMATION  
19 MIGHT BE; IS THAT CORRECT?

20 A. YES.

21 Q. SO FOR THE PERSON NAME SMART TAG -- WE'LL USE THE  
22 ORANGE AND SEE IF THAT WORKS BETTER -- THE FIRST  
23 INFORMATION IN YOUR VIEW IS THE NAME; RIGHT?

24 A. YES, IN THIS EXAMPLE, SURE.

25 Q. AND FOR THE DATE SMART TAG YOU SAID THAT THE FIRST



1 INFORMATION IS THE DATE; RIGHT?

2 A. RIGHT.

3 Q. AND FOR THE CUSTOM SMART TAG YOU SAID THE FIRST  
4 INFORMATION IS THAT PART NUMBER; RIGHT?

5 A. RIGHT.

6 Q. AND IT'S NOT SHOWN HERE, BUT I BELIEVE YOU ALSO  
7 TESTIFIED THAT IN THE CASE OF AN ADDRESS SMART TAG THE  
8 FIRST INFORMATION WOULD BE THE ADDRESS; IS THAT RIGHT?

9 A. YES.

10 Q. NOW, IF WE TURN TO -- THAT WAS THE PREAMBLE, LET ME  
11 HIGHLIGHT THAT. SO THAT'S THE PREAMBLE PART OF THE  
12 CLAIM, FIRST INFORMATION.

13 NOW, IF WE LOOK AT ELEMENT D OF CLAIM 1.

14 THE CLERK: MR. SCHERKENBACH, DO YOU WANT THIS  
15 SHOWN TO THE JURY?

16 MR. SCHERKENBACH: SURE, YES. LET ME PUT THAT  
17 BACK UP.

18 LADIES AND GENTLEMEN, I APOLOGIZE, I DIDN'T  
19 REALIZE WHICH MONITORS WERE ON OR NOT.

20 CAN THIS BE SHOWN TO THE JURY, YOUR HONOR?

21 THE COURT: YES.

22 MR. SCHERKENBACH: THANK YOU.

23 Q. SO JUST TO RUN THROUGH IT, WHAT WE DID,  
24 MR. KLAUSNER, IS IDENTIFY WHAT THE FIRST INFORMATION IS  
25 IN YOUR ANALYSIS OF THE PREAMBLE FOR, FIRST, THE PERSON

1 NAME SMART TAG; RIGHT?

2 A. YES.

3 Q. AND THEN WE HIGHLIGHTED FOR THE DATE SMART TAG, THE

4 FIRST INFORMATION IS THE DATE; TRUE?

5 A. TRUE.

6 Q. AND THEN FOR THE PERSON, OR EXCUSE ME, FOR THE PART

7 NUMBER YOUR CUSTOM SMART TAG, THE FIRST INFORMATION IS

8 THE PART NUMBER; RIGHT?

9 A. RIGHT.

10 Q. NOW WE'RE GOING TO GO ON TO ELEMENT D, AND I'LL

11 JUST HIGHLIGHT THAT. THIS IS THE STEP OF THE CLAIM

12 THAT REQUIRES ANALYZING AND SO FORTH; RIGHT?

13 A. RIGHT.

14 Q. DO YOU SEE THE WORD "ANALYZING" THERE?

15 A. YES.

16 Q. AND IT REQUIRES ANALYZING THE DOCUMENT TO DETERMINE

17 IF THE FIRST INFORMATION IS IN THE DOCUMENT; TRUE?

18 A. THAT'S TRUE.

19 Q. NOW, THE EXAMPLES YOU GIVE HERE APPEAR SORT OF IN

20 THE MIDDLE OF THE PAGE, LET ME JUST DO THAT. DO YOU

21 SEE WHERE I AM?

22 A. YES.

23 Q. AND IF WE LOOK AT THE PERSON NAME SMART TAG, THE

24 EXAMPLES YOU GIVE OF WHAT THE PERSON NAME SMART TAG

25 LOOKS FOR INCLUDE THESE ITEMS ON THESE TWO LINES, SO

1 LET ME READ IT INTO THE RECORD, "PREFIX, SUFFIX, DATE,  
2 TIME, ADDRESS, CITY, STATE, ZIP CODE, AND TELEPHONE  
3 NUMBER," CORRECT?  
4 A. YES.  
5 Q. SO THOSE ARE THE EXAMPLES YOU GAVE OF THE FIRST  
6 INFORMATION WHEN YOU WERE TALKING ABOUT ELEMENT D;  
7 CORRECT?  
8 A. NOT EXACTLY, BUT THE PERSON NAME WAS THE FIRST  
9 INFORMATION IN THIS CASE.  
10 Q. WELL, LET'S JUST GO BACK TO THE PREAMBLE. IN THE  
11 PREAMBLE YOU DID SAY THE FIRST INFORMATION FOR THE  
12 PERSON NAME SMART TAG IS THE PERSON NAME; RIGHT?  
13 A. RIGHT.  
14 Q. BUT FOR ELEMENT D, WHICH REQUIRES TRYING TO  
15 DETERMINE IF THE FIRST INFORMATION IS IN THE DOCUMENT,  
16 YOU DON'T SAY ANYTHING ABOUT PERSON NAME AS AN EXAMPLE  
17 OF FIRST INFORMATION, RIGHT, YOU IDENTIFY OTHER THINGS?  
18 A. I DON'T SAY ANYTHING ABOUT THE PERSON NAME?  
19 Q. WELL, LET'S LOOK AGAIN. THE PERSON NAME SMART TAG,  
20 THE EXAMPLES YOU GIVE OF THE SORT OF INFORMATION THAT  
21 THE PERSON NAME SMART TAG LOOKS FOR DO NOT INCLUDE THE  
22 NAME ITSELF; TRUE?  
23 A. IN THE LIST THAT FOLLOWS THE WORD PERSON NAME  
24 DOESN'T FOLLOW THERE.  
25 Q. RIGHT. SO YOU'RE USING A DIFFERENT FIRST

1 INFORMATION FOR ELEMENT D THAN YOU ARE FOR THE  
2 PREAMBLE; TRUE?

3 A. NO, I DON'T THINK SO.

4 Q. YOU DON'T SEE ANYWHERE IN YOUR CHART FOR ELEMENT D,  
5 ANALYZING FIRST INFORMATION, THAT FOR THE PERSON NAME  
6 SMART TAG, YOU DON'T SAY ANYTHING ABOUT PERSON NAME, DO  
7 YOU?

8 A. WELL, I'M ENCIRCLING IT RIGHT THERE. THERE IT IS,  
9 IT IS A PERSON NAME SMART TAG.

10 Q. AND YOU ARE SAYING THAT THE ACTION -- LET ME BACK  
11 UP A MINUTE. THE ANALYSIS YOU RELY ON HAPPENS  
12 ALLEGEDLY AFTER THE USER CLICKS ON THE MENU ITEM;  
13 RIGHT? SELECTS AN ACTION?

14 A. YES.

15 Q. AND YOU ARE SAYING HERE THAT FOR THE PERSON NAME  
16 SMART TAG, AFTER THE USER CLICKS ON AN ACTION, THE  
17 PROGRAM LOOKS FOR -- LET ME HIGHLIGHT THAT -- LOOKS FOR  
18 CERTAIN TYPES OF INFORMATION; RIGHT?

19 A. RIGHT.

20 Q. YOU DON'T SAY IT LOOKS FOR PERSON NAME; TRUE?

21 A. WELL, IT'S NOT TRUE. WHAT I'M SAYING IS THAT I'VE  
22 ENCIRCLED PERSON NAME AND ALSO A PREFIX AND SUFFIX ARE  
23 PART OF THE PERSON'S NAME.

24 Q. PREFIX AND SUFFIX ARE PART OF A PERSON'S NAME?

25 A. YES, JR. AND SR., FOR EXAMPLE.

1 Q. LET'S TALK ABOUT THAT FOR A MINUTE. PREFIXES AND  
2 SUFFIXES ARE SEPARATELY RECOGNIZED AS PIECES OF A  
3 PERSON'S NAME AS THE USER TYPES; RIGHT?  
4 A. THAT'S RIGHT.  
5 Q. AND THE NAME ITSELF, "DAVID KLAUSNER," IS  
6 RECOGNIZED AS A SEPARATE ENTITY; RIGHT?  
7 A. YES.  
8 Q. SO "DAVID" IS RECOGNIZED AS WHAT'S CALLED A GIVEN  
9 NAME; CORRECT?  
10 A. YES.  
11 Q. AND "KLAUSNER" WILL BE RECOGNIZED AS WHAT'S CALLED  
12 A SURNAME; CORRECT?  
13 A. YES.  
14 Q. AND ALL THAT HAPPENS AT THE TIME OF RECOGNITION,  
15 WHICH IS AS THE USER TYPES; CORRECT?  
16 A. YES.  
17 Q. SO THAT DOESN'T HAPPEN AFTER THE USER SELECTS AN  
18 ACTION FROM THE SMART TAG MENU; TRUE?  
19 A. THE RECOGNITION DOESN'T HAPPEN AFTER, CORRECT.  
20 Q. NOW, LET'S GO BACK TO MY EXAMPLE HERE ON ELEMENT D  
21 FOR THE PERSON NAME SMART TAG. YOUR ANALYSIS OF WHAT  
22 THE ANALYZING FOR FIRST INFORMATION IS, IS NOT LOOKING  
23 FOR PERSON NAME AGAIN, IT'S LOOKING FOR OTHER PIECES OF  
24 INFORMATION THAT YOU HAVE LISTED HERE, NAMELY, PREFIX,  
25 SUFFIX, DATE, TIME AND SO FORTH; RIGHT?

1 A. YES, IT SAYS WHAT IT SAYS.

2 Q. IT SAYS WHAT IT SAYS?

3 A. RIGHT.

4 Q. OKAY. AND THE SAME THING IS TRUE FOR DATE, IF WE

5 GO BACK TO THE PREAMBLE, FOR THE PREAMBLE FOR FIRST

6 INFORMATION, YOU SAID THE FIRST INFORMATION IS THE

7 DATE; RIGHT? THERE IN THE MIDDLE?

8 A. YES.

9 Q. BUT, AGAIN, IF WE GO TO ELEMENT D AND WE LOOK FOR

10 DATE, IT SAYS "PERSON NAME AND TIME," IT DOESN'T SAY

11 ANYTHING ABOUT DATE BEING THE FIRST INFORMATION, DOES

12 IT?

13 A. IN THIS LIST I HAVE THE DATE SMART TAG AND WHAT

14 FOLLOWS DOESN'T HAVE THE DATE IN IT.

15 Q. LET'S GO ON TO ELEMENT E. FIRST OF ALL, YOU

16 RECOGNIZE THIS AS ANOTHER ONE OF THE BOARDS THAT YOU

17 USED?

18 A. YES.

19 Q. AND ELEMENT E IS ABOUT SEARCHING FOR SECOND

20 INFORMATION RELATED TO THE FIRST INFORMATION, RIGHT, OR

21 ASSOCIATED WITH THE FIRST INFORMATION?

22 A. YES.

23 Q. AND FOR THE PERSON NAME SMART TAG YOU SAY THAT THE

24 INFORMATION THAT SEARCHED FOR IS THE PERSON'S NAME; IS

25 THAT RIGHT?

1       A.   YES.

2       Q.   SO IN THIS EXAMPLE, THE PERSON'S NAME IS THE SECOND

3       INFORMATION; CORRECT?

4       A.   IN THIS EXAMPLE, THE PERSON'S NAME IS THE SECOND

5       INFORMATION WITHIN THE RECORD IN THE CONTACT'S

6       DATABASE.

7       Q.   AND IF WE GO BACK TO THE PREAMBLE, FOR A PERSON

8       NAME SMART TAG YOU SAID THE PERSON'S NAME WAS THE FIRST

9       INFORMATION; RIGHT?

10      A.   THE PERSON'S NAME IN HERE INCLUDES THE MR. AND THE

11      JR.   THE FIRST INFORMATION INCLUDES MR. AND JR.

12      Q.   BUT IT ALSO INCLUDES ATLE HEDLOY; TRUE?

13      A.   TRUE.

14      Q.   SO IN THIS EXAMPLE, IN THE FIRST EXAMPLE YOU GIVE

15      FOR ELEMENT E OF THE PERSON NAME SMART TAG SEARCHING

16      FOR THE PERSON NAME, YOU'RE SAYING THAT THE PERSON NAME

17      IS BOTH THE FIRST INFORMATION AND IT'S THE SECOND

18      INFORMATION; RIGHT?

19      A.   ACTUALLY, I THINK THAT WHAT I INTENDED TO SAY WAS

20      THAT IT SEARCHES USING THE PERSON'S NAME OR FOR THE

21      PERSON'S NAME, AND THE SECOND INFORMATION INCLUDES

22      EVERYTHING IN THE CONTACT DATABASE FOR THAT PERSON, AS

23      WE SAW IN THE DEMONSTRATIONS I SHOWED THE JURY THE

24      OTHER DAY.

25      Q.   SO YOU'RE SAYING -- THIS IS ABOUT ELEMENT E YOU'RE

1 SAYING, YOU'RE TALKING ABOUT NOW?

2 A. YES, WE'RE TALKING ABOUT ELEMENT E.

3 Q. SO YOU'RE SAYING NOW THAT THE PERSON'S NAME IS NOT  
4 THE SECOND INFORMATION, BUT IT'S OTHER INFORMATION IN  
5 OUTLOOK?

6 A. WELL, CERTAINLY THE PERSON'S NAME THAT'S IN THE  
7 CONTACT DATABASE IS ASSOCIATED WITH WHAT THE FIRST  
8 INFORMATION IS THAT THE PERSON TYPED IN THE DOCUMENT.  
9 SO THAT'S CERTAINLY TRUE. THERE'S ALSO OTHER  
10 INFORMATION IN THE CONTACT DATABASE SUCH AS THE  
11 PERSON'S ADDRESS AND THEIR TELEPHONE NUMBER, THAT'S  
12 ALSO ASSOCIATED WITH THE PERSON'S NAME, THE FIRST  
13 INFORMATION.

14 Q. SO LET ME TRY TO UNDERSTAND THAT. YOU'RE SAYING  
15 OTHER EXAMPLES OF SECOND INFORMATION FOR THE PERSON  
16 NAME SMART TAG COULD INCLUDE A PERSON'S ADDRESS?

17 A. YES.

18 Q. OKAY. BUT IF WE GO BACK TO ELEMENT D, THIS  
19 REQUIRES ANALYZING THE DOCUMENT FOR FIRST INFORMATION,  
20 RIGHT, THIS ELEMENT?

21 A. CORRECT.

22 Q. AND FOR THE PERSON NAME SMART TAG YOU SAY ADDRESS  
23 IS AN EXAMPLE OF FIRST INFORMATION; RIGHT?

24 A. NO, IT'S AN EXAMPLE OF ANALYSIS. IT'S AN EXAMPLE  
25 OF ANALYSIS. YOU'RE MISREADING WHAT THE CLAIM SAYS.



1 IT SAYS ANALYZING THE DOCUMENT TO DETERMINE THE FIRST  
2 INFORMATION. SO IT ANALYZES THE DOCUMENT FOR -- ALSO  
3 FOR ADDRESS. WE SAW THAT AS AN EXAMPLE THAT I  
4 DEMONSTRATED THE OTHER DAY.

5 Q. SO WHEN YOU LISTED THESE TYPES OF INFORMATION AFTER  
6 PERSON NAME SMART TAG, HERE WHERE I'M GESTURING ON  
7 ELEMENT D OF YOUR CLAIM CHART, YOU WEREN'T TELLING THE  
8 JURY THAT THESE ARE EXAMPLES OF THE SORT OF FIRST  
9 INFORMATION THAT THE DOCUMENT IS ANALYZING TO FIND?

10 A. FOR PERSON NAME, THE FIRST INFORMATION IS THE  
11 PERSON'S NAME. AND THE ANALYSIS ALSO INCLUDES LOOKING  
12 FOR OTHER PIECES OF INFORMATION, AND THAT'S WHAT I TOLD  
13 THE JURY.

14 Q. DO YOU REMEMBER YOU TESTIFIED THAT SOME OF THE  
15 ANALYSIS YOU POINTED TO HAD TO DO WITH WHAT'S CALLED A  
16 PROPERTY BAG IN SMART TAGS?

17 A. YES.

18 Q. AND JUST TO REFRESH EVERYBODY, CAN YOU TELL THE  
19 JURY AGAIN WHAT THE PROPERTY BAG IS?

20 A. IT'S A PIECE OF THE DOCUMENT THAT'S HIDDEN FROM THE  
21 USER, IT'S NOT VISIBLE, AND IT CONTAINS INFORMATION  
22 SUCH AS WHAT THE TEXT IS THAT'S BEEN RECOGNIZED AS A  
23 SMART TAG, HOW LONG IT IS, WHERE IT STARTS IN THE  
24 DOCUMENT, WHAT TYPE OF A SMART TAG IT IS. SO IT'S A  
25 BAG THAT HOLDS THE PROPERTIES OF WHAT THE SMART TAG IS.

1 Q. AND YOU AGREE THAT THIS PROPERTY BAG CONTAINED THIS  
2 INFORMATION ABOUT SMART TAGS, THAT'S CREATED AT THE  
3 TIME OF RECOGNITION; TRUE?

4 A. YES.

5 Q. SO IN PARTICULAR, IT'S CREATED BEFORE THE USER EVER  
6 DECIDES TO DO ANYTHING WITH THE SMART TAG; TRUE?

7 A. THAT'S TRUE.

8 Q. AND THE USER -- STRIKE THAT. THE PROPERTY BAG IS  
9 CREATED AUTOMATICALLY BY THE PROGRAM; RIGHT?

10 A. THAT'S RIGHT.

11 Q. THE USER DOESN'T TYPE ANYTHING INTO THE PROPERTY  
12 BAG; TRUE?

13 A. THAT'S CORRECT.

14 Q. NOW, LET'S TALK ABOUT THE PART OF THE ANALYSIS THAT  
15 COMES, THAT YOU SAY COMES AFTER THE USER SELECTS A MENU  
16 ITEM IN SMART TAGS; OKAY?

17 A. YES.

18 Q. THAT'S THE ANALYSIS THAT YOU SAY IS COVERED BY  
19 CLAIM 1 OF THE PATENT; TRUE?

20 A. TRUE.

21 Q. AND IN PARTICULAR, I BELIEVE YOU HAVE SAID THAT THE  
22 SMART TAGS' ACTION ANALYZES THE DOCUMENT SURROUNDING  
23 THE SMART TAG TO DETERMINE IF FIRST INFORMATION, SUCH  
24 AS PARTS OF A PERSON'S NAME OR PLACE IS CONTAINED  
25 THEREIN; TRUE?

1 A. THAT'S RIGHT.

2 Q. AND ONE OF THE THINGS YOU RELIED ON FOR YOUR  
3 CONCLUSION THAT THERE IS SOME SORT OF ANALYSIS THAT  
4 HAPPENS AFTER THE MENU SELECTION IS A DECLARATION BY  
5 MR. HIGASHIYAMA; DO YOU REMEMBER THAT?

6 A. YES, THAT'S CORRECT.

7 Q. YOU INTRODUCED THAT INTO EVIDENCE AND YOU POINTED  
8 THE JURY TO PARAGRAPH 24 OF THAT DECLARATION; DO YOU  
9 RECALL THAT?

10 A. YES.

11 Q. AND I TAKE IT YOU AGREE WITH MR. HIGASHIYAMA'S  
12 DESCRIPTION OF SMART TAGS AS CONTAINED IN HIS  
13 DECLARATION; IS THAT FAIR?

14 A. I DON'T KNOW WHAT THE REST OF IT IS AS I STAND HERE  
15 NOW, BUT I AGREE WITH WHAT HE SAID IN PARAGRAPH 24.

16 Q. WELL, IN DECIDING WHETHER TO RELY ON PARAGRAPH 24  
17 YOU DID READ THE WHOLE DECLARATION, DIDN'T YOU?

18 A. YES.

19 Q. AND YOU DON'T RECALL WHEN YOU READ THE REST OF IT,  
20 DISAGREEING WITH HIS DESCRIPTION OF SMART TAGS IN OTHER  
21 RESPECTS, DO YOU?

22 A. I DON'T REMEMBER EITHER WAY.

23 Q. WELL, LET'S TAKE A LOOK.

24 YOUR HONOR, THIS IS IN EVIDENCE, SO MAY THE JURY  
25 SEE THE DECLARATION?

1 THE COURT: YES.

2 Q. I'VE PUT UP ON THE SCREEN, MR. KLAUSNER, PARAGRAPH  
3 13 FROM MR. HIGASHIYAMA'S DECLARATION. YOU WOULD AGREE  
4 WITH MR. HIGASHIYAMA THAT "SMART TAGS RELY ON THE USER  
5 TO MANUALLY DIRECT WHETHER ANY ACTION SHOULD BE TAKEN  
6 AND WHAT INFORMATION IS REQUESTED. NOTHING HAPPENS TO  
7 A RECOGNIZED SMART TAG UNLESS AND UNTIL THE USER CLICKS  
8 ON THE SMART TAG ICON AND SELECTS AN ACTION." TRUE?

9 A. I THINK GENERALLY THAT'S TRUE. THERE IS AN  
10 EXCEPTION THAT I KNOW OF.

11 Q. SO GENERALLY THAT'S TRUE. LET'S TAKE A LOOK AT  
12 PARAGRAPH 14. YOU WOULD ALSO AGREE WITH  
13 MR. HIGASHIYAMA THAT "EACH SMART TAG HAS A LIST OF  
14 POSSIBLE ACTIONS THAT IS DISPLAYED ONLY WHEN A USER  
15 DECIDES TO SELECT THE MENU FOR A SMART TAG." RIGHT?

16 A. RIGHT, THE USER SELECTS THE MENU, CORRECT.

17 Q. AND ONE MORE, TAKE A LOOK AT PARAGRAPH 15. YOU  
18 WOULD ALSO AGREE WITH MR. HIGASHIYAMA THAT "THE ACTION  
19 HANDLER CONTROLS THE ACTIONS ALLOWED FOR EACH SMART TAG  
20 DATA TYPE," LET ME JUST STOP HERE. DO YOU AGREE WITH  
21 THAT STATEMENT?

22 A. YES.

23 Q. ALL RIGHT. AND DO YOU ALSO AGREE, I TAKE IT, THAT  
24 "TO INVOKE THE ACTION HANDLER, THE USER MUST HOVER THE  
25 MOUSE OVER THE RECOGNIZED PORTION OF TEXT UNTIL A SMART

1 TAG ICON APPEARS AND THEN CLICK ON THE ICON"; TRUE?

2 A. THAT'S ONE OF THE WAYS, THERE ARE OTHERS. AT LEAST  
3 ONE OTHER THAT I KNOW OF.

4 Q. WELL, THE OTHER WAY BEING YOU CAN SORT OF HAVE A  
5 KEYBOARD COMBINATION INSTEAD OF CLICKING WITH THE  
6 MOUSE; RIGHT?

7 A. RIGHT.

8 Q. NOW, LET'S COME TO THE PARAGRAPH THAT YOU DO RELY  
9 ON, PARAGRAPH 24, AND WE'LL USE THE TOUCH SCREEN HERE.

10 YOU RELY IN PARTICULAR ON THE LAST PORTION OF  
11 PARAGRAPH, 24, CORRECT, WHERE MR. HIGASHIYAMA TALKS  
12 ABOUT WHAT HAPPENS AFTER A USER CLICKS ON THE ICON AND  
13 SELECTS AN ACTION; TRUE?

14 A. CAN I JUST HAVE A MOMENT TO LOOK THROUGH THE  
15 PARAGRAPH?

16 Q. SURE, SURE.

17 THE COURT: WHAT EXHIBIT NUMBER IS THAT,  
18 MR. SCHERKENBACH?

19 MR. SCHERKENBACH: FIFTY-SIX.

20 A. YES, I'VE READ IT.

21 Q. AND HAVE I BRACKETED THE PORTION THAT YOU RELY ON  
22 AS SUPPORT FOR YOUR OPINION, THAT THERE IS SOME  
23 ANALYSIS OF THE DOCUMENT THAT HAPPENS AFTER THE USER  
24 CLICKS ON AN ACTION?

25 A. I THINK SO.

1 Q. NOW, WHAT MR. HIGASHIYAMA SAYS HAPPENS AT THAT  
2 POINT, IF I CAN UNDERLINE IT THERE, IS THAT THE ACTION  
3 HANDLER LOOKS AT SURROUNDING TEXT; TRUE?

4 A. YES, THAT'S WHAT HE SAYS.

5 Q. AND HE SAYS IF IT LOCATES THAT INFORMATION OR SOME  
6 INFORMATION, IT CAN INCLUDE IT IN THE INFORMATION FOR  
7 THE ACTION THAT IS SELECTED; RIGHT?

8 A. THAT'S WHAT HE SAYS.

9 Q. SO HE DOESN'T USE THE WORD "ANALYSIS" OR  
10 "ANALYZING" TO DESCRIBE WHAT HAPPENS AFTER THE USER  
11 SELECTS AN ACTION?

12 A. THAT'S TRUE, IN THAT PARAGRAPH HE DOESN'T USE THE  
13 WORD "ANALYZE."

14 Q. WE'LL COME BACK TO THE WORDS HE DID USE IN A  
15 MOMENT.

16 OKAY, NOW, ONE OF THE SPECIFIC EXAMPLES THAT YOU  
17 USE IN YOUR OPINION AN ANALYSIS THAT HAPPENS AFTER AN  
18 ACTION IS SELECTED, IS WHAT YOU CALL TRIMMING THE TITLE  
19 FROM A PERSON'S NAME; RIGHT?

20 A. CORRECT.

21 Q. AGAIN, SO THE JURY REMEMBERS WHAT THAT IS, CAN YOU  
22 JUST BRIEFLY TELL US WHAT YOU MEAN WHEN YOU SAY "TRIM  
23 THE TITLE"?

24 A. THE NAME AS IT'S BEEN RECOGNIZED IS STORED IN THE  
25 PROPERTY BAG, AND THERE'S A PROGRAM CALLED TRIMTITLE

1        THAT FIRST LOOKS UP AND DOES AN ANALYSIS AFTER THE  
2        SINGLE ENTRY OF THE EXECUTE COMMAND, TO FIND THE  
3        PARTICULAR POINT IN THE DOCUMENT THAT REFERENCES THE  
4        PROPERTY BAG THAT HAS ALL OF THIS INFORMATION. IT THEN  
5        GOES INTO THE PROPERTY BAG AND DOES ANALYSIS TO FIND  
6        THE NAME ITSELF, ELIMINATES OR IGNORES THE PREFIX AND  
7        THE SUFFIX, BRINGS THE NAME OUT AND PROVIDES IT TO  
8        WHOEVER IT WAS THAT NEEDED THAT NAME, AND THAT'S  
9        TRIMMING THE TITLE.

10      Q. AND YOU ACTUALLY GAVE THE JURY AN EXAMPLE OF A NAME  
11      THAT HAD A TITLE, DO YOU RECALL, DURING YOUR TESTIMONY?

12      A. YES, I DID.

13      Q. YOU TYPED MR. ATLE HEDLOY; RIGHT?

14      A. YES.

15      Q. I PUT ON THE SCREEN, MR. KLAUSNER, A SCREEN SHOT,  
16      IF YOU WILL, OF ONE OF YOUR EXAMPLES. DOES THAT APPEAR  
17      TO YOU TO BE WHAT IT IS? I'LL REPRESENT TO YOU THAT WE  
18      MADE THE FONT BIGGER SO WE CAN SEE IT BETTER, 26.5,  
19      THAT'S THE ONLY DIFFERENCE; IS THAT FAIR?

20      A. OKAY.

21      Q. SO THIS -- IN THIS EXAMPLE THERE IS ACTUALLY BOTH A  
22      TITLE, WHICH IS MR., AND A SUFFIX, WHICH IS JR.,  
23      CORRECT?

24      A. THAT IS CORRECT.

25      Q. AND THE DOTTED UNDERLINE INDICATES THAT AS THE USER

1       TYPED THIS NAME, IT WAS RECOGNIZED; CORRECT?

2       A.   YES.

3       Q.   AND NOT ONLY WAS THE NAME ATLE HEDLOY RECOGNIZED,  
4       BUT THE TITLE, "MR." WAS RECOGNIZED AND THE SUFFIX,  
5       "JR." WAS ALSO RECOGNIZED; TRUE?

6       A.   THAT'S RIGHT.

7       Q.   AND, IN FACT, IF WE LOOK AT THE XML SOURCE FOR THIS  
8       DOCUMENT, THE UNDERLYING CODES, IT WILL SHOW US THAT  
9       ALL OF THAT RECOGNITION HAS OCCURRED; TRUE?

10       MR. FEHER:  OBJECTION, YOUR HONOR.  THIS IS NOT  
11       AN EXHIBIT THAT MR. KLAUSNER USED.

12       THE COURT:  OVERRULED.  YOU MAY ANSWER.

13       Q.   SO MY QUESTION IS IF WE ACTUALLY LOOK BEHIND THE  
14       SCENES HERE, UNDER THE HOOD, I THINK, AS YOU PUT IT, AT  
15       THE SOURCE FOR THIS DOCUMENT, IT WILL SHOW THAT EACH OF  
16       THOSE PIECES OF THE NAME HAS BEEN SEPARATELY  
17       RECOGNIZED; TRUE?

18       A.   I THINK THAT'S RIGHT.

19       Q.   SO LET'S DO THAT.  I ASSUME YOU'VE LOOKED AT THE  
20       SOURCE FOR THE EXAMPLES YOU GAVE THE JURY BEFORE, YOU  
21       KNOW WHAT THE SOURCE LOOKS LIKE?

22       A.   I DON'T KNOW THAT I LOOKED AT THE SOURCE FOR THE  
23       EXAMPLES I GAVE THE JURY.

24       Q.   WELL, LET'S DO IT NOW.  I'VE JUST TURNED, JUST SO  
25       THERE'S NO CONFUSION HERE, SO THE FIRST PAGE OF THE



1       DOCUMENT WE'RE LOOKING AT IS JUST A SCREEN SHOT, OKAY,  
2       AND THEN THE NEXT TWO PAGES ARE THE SOURCE FOR THAT  
3       DOCUMENT, WHICH CONTAIN, AMONG OTHER THINGS, A BUNCH OF  
4       FORMATTING INFORMATION, RIGHT, YOU KNOW THAT TO BE  
5       TRUE?

6       A.   YES.

7       Q.   AND IF YOU GO TO THE VERY END OF ALL OF THAT  
8       FORMATTING INFORMATION AND SO FORTH, YOU COULD FIND THE  
9       INFORMATION THAT RELATES TO THE SMART TAG, CORRECT?

10       DO YOU SEE WHERE I'VE BRACKETED IT?

11       A.   YES, THAT'S RIGHT.

12       Q.   SO, I'LL DO TITLE FIRST.  I'VE JUST BRACKETED WHAT  
13       ARE CALLED TWO TAGS THAT IDENTIFY "MR." AS A TITLE;  
14       CORRECT?

15       A.   THAT'S CORRECT.

16       Q.   AND THAT HAPPENS AT THE TIME OF RECOGNITION; RIGHT?

17       A.   I BELIEVE THAT'S RIGHT.

18       Q.   AND --

19       A.   WELL, THE "MR." IS RECOGNIZED AT THE TIME OF  
20       RECOGNITION.

21       Q.   AND NOT ONLY IS THE "MR." RECOGNIZED, BUT WHEN IT'S  
22       RECOGNIZED, THESE TAGS THAT SAY "SMART TAG 1 TITLE,"  
23       ARE ACTUALLY ADDED TO THE DOCUMENT AS WELL AT THE TIME  
24       OF RECOGNITION; RIGHT?

25       A.   THAT'S CORRECT.

1 Q. RIGHT. NOW, LET'S DO SUFFIX IN BLUE.  
2 AND YOU SEE THE "JR." IN BETWEEN; CORRECT?  
3 A. YES.  
4 Q. SO THE SUFFIX IS ALSO RECOGNIZED AND TAGGED AT THE  
5 TIME OF RECOGNITION; TRUE?  
6 A. THAT'S TRUE.  
7 Q. AND JUST TO COMPLETE OUR EXAMPLE HERE IF I HAVE  
8 ENOUGH COLORS, THE FIRST NAME IS RECOGNIZED SEPARATELY  
9 AS A GIVEN NAME, SMART TAG GIVEN NAME, "ATLE," CORRECT?  
10 A. YES.  
11 Q. THAT HAPPENS AT THE TIME OF RECOGNITION; RIGHT?  
12 A. YES.  
13 Q. AND THE LAST ONE -- WELL, ACTUALLY NOT QUITE THE  
14 LAST ONE -- THE SURNAME, SMART TAG TYPE SURNAME, SN,  
15 MR. HEDLOY'S LAST NAME, THAT'S RECOGNIZED AT THE TIME  
16 OF RECOGNITION AS THE USER TYPES; TRUE?  
17 A. THAT'S CORRECT.  
18 Q. AND THE LAST ONE IS ACTUALLY THE WHOLE THING IS  
19 TAGGED AS A PERSON NAME; RIGHT?  
20 A. RIGHT.  
21 Q. SO MR. ATLE HEDLOY, JR., THE WHOLE THING IS  
22 IDENTIFIED AS A PERSON NAME AT THE TIME OF RECOGNITION;  
23 TRUE?  
24 A. YES.  
25 Q. OKAY.

1           MR. SCHERKENBACH: YOUR HONOR, WE HAVE MARKED  
2           THIS DOCUMENT THAT I HAVE BEEN WORKING FROM AS EXHIBIT  
3           S-26 AND I WOULD LIKE TO MOVE IT IN EVIDENCE.

4           MR. FEHER: NO OBJECTION.

5           MR. HAYES: NO OBJECTION, YOUR HONOR.

6           THE COURT: S-26 MAY BE ADMITTED AS A FULL  
7           EXHIBIT.

8           (DEFENDANT'S EXHIBIT S-26 ADMITTED IN FULL)

9           MR. SCHERKENBACH: CAN WE PUBLISH THIS TO THE  
10          JURY, YOUR HONOR.

11          WE'LL JUST GO BACK TO THE FIRST PAGE, LADIES AND  
12          GENTLEMEN. THIS IS THE SCREEN SHOT. AND THEN WHAT  
13          I'VE HIGHLIGHTED HERE ON PAGE 2.

14          Q. NOW, IF WE WENT THROUGH, MR. KLAUSNER, AND WE CAN  
15          DO THAT, ALL OF THE OTHER EXAMPLES THAT YOU GAVE TO THE  
16          JURY OF SMART TAG TYPES, WHETHER IT'S PERSON NAME,  
17          DATE, ADDRESS, TIME, PLACE, WE WOULD SEE THE SAME THING  
18          IN THE SOURCE OF THOSE DOCUMENTS; TRUE? THAT WAS A BAD  
19          QUESTION.

20          WE WOULD SEE THAT ALL OF THOSE SMART TAG  
21          ATTRIBUTES ARE RECOGNIZED AS THE USER TYPES; RIGHT?

22          A. YES.

23          Q. LET ME GIVE YOU ANOTHER EXAMPLE. THIS WAS THE  
24          NEXT -- AFTER YOU SHOWED THE JURY, "MR. ATLE HEDLOY,  
25          JR.," YOU THEN TYPED A DATE UNDERNEATH IT. DO YOU

1 RECALL THAT EXAMPLE?

2 A. I DON'T SPECIFICALLY RECALL, BUT I THINK THAT'S  
3 SIMILAR TO WHAT I DID, SO, PLEASE.

4 Q. YOU DON'T DISAGREE THAT THIS IS AN ACCURATE  
5 REPRESENTATION OF AN EXAMPLE THAT YOU SHOWED THE JURY  
6 ON YOUR DIRECT EXAM, DO YOU?

7 A. I THINK IT IS. BUT --

8 Q. OKAY. AND AGAIN, IF WE WERE TO LOOK AT THE SOURCE  
9 FOR THIS DOCUMENT, WE WOULD SEE THAT THE DATE WAS,  
10 AGAIN, RECOGNIZED AND TAGGED AS A SMART TAG AT THE TIME  
11 THE USER TYPED IT IN; TRUE?

12 A. YES.

13 MR. SCHERKENBACH: YOUR HONOR, I WOULD LIKE TO  
14 MOVE THE ADMISSION OF THIS EXAMPLE WE'VE MARKED IT AS  
15 T-26.

16 MR. FEHER: NO OBJECTION, YOUR HONOR.

17 THE COURT: T-26 MAY BE ADMITTED AS A FULL  
18 EXHIBIT.

19 (DEFENDANT'S EXHIBIT T-26 ADMITTED IN FULL)

20 MR. SCHERKENBACH: AND MAY WE PUBLISH THAT TO  
21 THE JURY, YOUR HONOR.

22 Q. SO WE HAVE ON THE FIRST PAGE WHAT THE SCREEN LOOKED  
23 LIKE TO THE USER; CORRECT?

24 A. CORRECT.

25 Q. AND ON THE LAST PAGE IN THE SOURCE FOR THE

1       DOCUMENT, WE SEE THAT THE DATE, WHICH I PUT AN ARROW  
2       POINTING AT THE DATE, HAS BEEN RECOGNIZED AND TAGGED AS  
3       A DATE SMART TAG; RIGHT?

4       A.   RIGHT.

5       Q.   NOW, ANOTHER EXAMPLE YOU GAVE THE JURY WAS A NAME  
6       AND ADDRESS EXAMPLE; DO YOU RECALL THAT?

7       A.   YES.

8       Q.   AND THIS IS, I THINK, THE SPECIFIC EXAMPLE YOU  
9       USED. I REPRESENT THAT I MADE ONE CHANGE, WHICH IS YOU  
10      TYPED -- YOU TYPED "ATTWELL STREET," AND I THINK IT IS  
11      "ATWELLS AVENUE," RIGHT?

12      A.   YES.

13      Q.   BUT EXCEPT FOR THAT ONE CHANGE, WHAT WE'RE LOOKING  
14      AT HERE IS AN ACCURATE REPRESENTATION OF THE SCREEN FOR  
15      YOUR NAME AND ADDRESS EXAMPLE; TRUE?

16      A.   YES, IT'S FAIR ENOUGH.

17      Q.   AND BY THE WAY, YOU HAD TYPED IN THE "PROVIDENCE,  
18      RHODE ISLAND," DO YOU SEE THAT?

19      A.   YES.

20      Q.   AND THAT ISN'T, IN THIS EXAMPLE, ACTUALLY  
21      UNDERLINED WITH DOTTED UNDERLINES, IS IT?

22      A.   NO, IT'S NOT.

23      Q.   BUT IT HAS BEEN RECOGNIZED AS A SMART TAG, HASN'T  
24      IT?

25      A.   I'M SORRY?

1 Q. EVEN THOUGH IT IS NOT UNDERLINED SO THE USER CAN  
2 SEE IT, "PROVIDENCE, RHODE ISLAND" HAS BEEN RECOGNIZED  
3 BY THE PROGRAM AS A PLACE, HASN'T IT?

4 A. IT MAY HAVE.

5 Q. LET'S TAKE A LOOK AT THE SOURCE FOR THIS DOCUMENT,  
6 AND, AGAIN, WE'LL FLIP TO THE LAST PAGE, OR NEARLY THE  
7 LAST PAGE. AND I'LL GO SOMEWHAT MORE QUICKLY THROUGH  
8 THIS.

9 SO IT'S CORRECT THAT THE GIVEN NAME "DAVID," HAS  
10 BEEN RECOGNIZED AS THE USER TYPES; TRUE?

11 A. THAT'S TRUE.

12 Q. THE SURNAME, "KLAUSNER," HAS BEEN RECOGNIZED AS THE  
13 USER TYPES; TRUE?

14 A. YES.

15 Q. AND THE WHOLE THING, "DAVID KLAUSNER," HAS BEEN  
16 RECOGNIZED AS A PERSON NAME; RIGHT?

17 A. YES.

18 Q. AGAIN AS THE USER TYPES, CORRECT?

19 A. THAT'S CORRECT.

20 Q. AND "ATWELLS AVENUE" HAS BEEN RECOGNIZED AS AN --  
21 ACTUALLY, TWO THINGS, BOTH AN ADDRESS AND A STREET;  
22 CORRECT?

23 A. YES.

24 Q. AND THAT, AGAIN, HAPPENS AS THE USER TYPES; RIGHT?

25 A. THAT'S CORRECT.

1 Q. NOW, I ASKED ABOUT PROVIDENCE. PROVIDENCE HAS BEEN  
2 RECOGNIZED ALSO AS A CITY; TRUE?

3 A. YES.

4 Q. AGAIN, AS THE USER TYPED, IT WAS RECOGNIZED AS A  
5 CITY; RIGHT?

6 A. YES.

7 Q. AND IT'S ACTUALLY ALSO -- STRIKE THAT. RHODE  
8 ISLAND HAS BEEN RECOGNIZED AS A STATE; RIGHT?

9 A. YES.

10 Q. AND THAT AGAIN HAPPENED AS THE USER TYPED; CORRECT?

11 A. YES.

12 Q. IS THAT CORRECT -- OKAY.

13 AND THE WHOLE THING, "PROVIDENCE, RHODE ISLAND"  
14 TOGETHER WAS RECOGNIZED AS A PLACE; RIGHT?

15 A. THAT'S CORRECT.

16 Q. AND AGAIN, THAT HAPPENED AS THE USER TYPED THE  
17 INFORMATION IN THE DOCUMENT; RIGHT?

18 A. RIGHT.

19 MR. SCHERKENBACH: YOUR HONOR, I WOULD LIKE TO  
20 MOVE THE ADMISSION OF EXHIBIT U-26.

21 THE COURT: U-26 MAY BE ADMITTED AS A FULL  
22 EXHIBIT.

23 MR. FEHER: NO OBJECTION, YOUR HONOR.

24 (DEFENDANT'S EXHIBIT U-26 ADMITTED IN FULL)

25 MR. SCHERKENBACH: MAY WE PUBLISH IT TO THE

1 JURY, YOUR HONOR? THANK YOU. SO YOU'RE LOOKING,  
2 LADIES AND GENTLEMEN, AT THE -- HERE'S THE SCREEN SHOT.  
3 Q. AND, MR. KLAUSNER, I ASKED YOU ON THE SCREEN SHOT  
4 "PROVIDENCE, RHODE ISLAND" IS NOT UNDERLINED; RIGHT?  
5 A. THAT'S CORRECT.  
6 Q. BUT IT HAS BEEN RECOGNIZED AND TAGGED AS A SMART  
7 TAG; TRUE?  
8 A. YES, IN THE EXAMPLE THAT YOU GAVE.  
9 Q. SO YOU UNDERSTAND, THERE ACTUALLY ARE PIECES OF  
10 TEXT THAT GET RECOGNIZED AND TAGGED, BUT THEY AREN'T  
11 UNDERLINED NECESSARILY, RIGHT?  
12 A. YES.  
13 Q. AND IF WE LOOK AT THE LAST PAGE OF THIS DOCUMENT,  
14 WE'VE HIGHLIGHTED ON THIS PAGE, HAVEN'T WE,  
15 MR. KLAUSNER, THE TAGS SHOWING WHICH PIECES OF THE NAME  
16 AND ADDRESS ON THE COVER HAVE BEEN RECOGNIZED BY SMART  
17 TAGS; TRUE?  
18 A. THAT'S CORRECT.  
19 Q. ALMOST DONE, THE LAST ONES GO QUICKLY. NOW, AFTER  
20 YOU TYPED THE NAME AND ADDRESS, YOU ADDED DATE  
21 UNDERNEATH IN ONE OF YOUR EXAMPLES; DO YOU RECALL THAT?  
22 A. YES.  
23 Q. SO IN THIS ONE I'M GOING TO HIGHLIGHT IT. SO IN  
24 THIS ONE THE ONLY NEW INFORMATION IS THE DATE; CORRECT?  
25 A. THAT'S RIGHT.



1 Q. AND THAT'S BEEN UNDERLINED WHICH MEANS IT'S BEEN  
2 RECOGNIZED; TRUE?

3 A. YES.

4 Q. AND IF WE LOOK AT THE SOURCE FOR THIS DOCUMENT NOW,  
5 IT WILL SHOW US THAT THE DATE HAS BEEN RECOGNIZED AND  
6 TAGGED AS A SMART TAG; RIGHT?

7 A. IN THE XML, CORRECT.

8 Q. SO I'M GOING TO HIGHLIGHT, THIS ONE ACTUALLY SPILLS  
9 OVER ON TO THE NEXT PAGE. SO IT'S CORRECT THAT THE  
10 DATE, "SEPTEMBER 16, 2004," HAS BEEN RECOGNIZED AND  
11 TAGGED AS A SMART TAG ALSO AS THE USER TYPED; RIGHT?

12 A. RIGHT.

13 MR. SCHERKENBACH: YOUR HONOR, I WOULD LIKE TO  
14 MOVE THE ADMISSION OF EXHIBIT V-26.

15 MR. FEHER: NO OBJECTION, YOUR HONOR.

16 THE COURT: V-26 MAY BE ADMITTED AS A FULL  
17 EXHIBIT.

18 (DEFENDANT'S EXHIBIT V-26 ADMITTED IN FULL)

19 MR. SCHERKENBACH: MAY WE PUBLISH THAT TO THE  
20 JURY.

21 Q. SO THAT THE JURY CAN SEE WHAT WAS ADDED ON THIS ONE  
22 TO THE PREVIOUS EXHIBIT, WHICH IS U-26, IS THE DATE,  
23 CORRECT, MR. KLAUSNER?

24 A. YES.

25 Q. AND IF WE LOOK AT THE SOURCE FOR THE DOCUMENT, WE

1 CAN SEE THAT THAT DATE HAS BEEN RECOGNIZED AND TAGGED  
2 AS A SMART TAG AS THE USER TYPED; TRUE?

3 A. THAT'S RIGHT.

4 Q. AND AFTER ADDING THE DATE, THE NEXT THING YOU DID  
5 WAS YOU TYPED THE TIME; IS THAT RIGHT?

6 A. YES.

7 Q. AND I THINK YOU TYPED 3:45 P.M., DO YOU RECALL  
8 THAT?

9 A. YES.

10 Q. NOW, AGAIN, THIS IS ANOTHER EXAMPLE OF A SMART TAG  
11 THAT HAS BEEN RECOGNIZED, BUT IT'S NOT ACTUALLY  
12 UNDERLINED; ISN'T THAT TRUE?

13 A. PROBABLY.

14 Q. WELL, LET'S TAKE A LOOK AT THE SOURCE FOR THIS  
15 DOCUMENT AND VERIFY THAT. SO IF WE FLIP TO THE LAST  
16 PAGE, IT'S CORRECT, ISN'T IT, THAT 3:45 P.M. HAS BEEN  
17 RECOGNIZED AND TAGGED AS A TIME AS THE USER TYPED;  
18 TRUE?

19 A. YES.

20 MR. SCHERKENBACH: YOUR HONOR, I WOULD LIKE TO  
21 MOVE THE ADMISSION OF EXHIBIT W-26.

22 MR. FEHER: NO OBJECTION.

23 THE COURT: W-26 MAY BE ADMITTED AS A FULL  
24 EXHIBIT.

25 (DEFENDANT'S EXHIBIT W-26 ADMITTED IN FULL)

1           MR. SCHERKENBACH:  AND MAY THE JURY SEE THIS AS  
2       WELL, YOUR HONOR.  THANK YOU.

3       Q.  SO IN THIS ONE, MR. KLAUSNER, THE ONLY CHANGE FROM  
4       THE LAST EXHIBIT WAS ADDING THE TIME, CORRECT?

5       A.  THAT'S CORRECT.

6       Q.  AND THAT TIME WAS RECOGNIZED AND TAGGED AS A SMART  
7       TAG AS THE USER TYPED; TRUE?

8       A.  THAT'S CORRECT.

9       Q.  ALL RIGHT, LAST ONE.  YOU DID A CUSTOM SMART TAG,  
10      DO YOU REMEMBER THAT?

11      A.  YES.

12      Q.  AND IT HAD TO DO WITH PART NUMBER, RIGHT?

13      A.  YES.

14      Q.  I'M PUTTING UP ON YOUR SCREEN A SCREEN SHOT OF THAT  
15      PART NUMBER SMART TAG, DO YOU SEE IT?

16      A.  YES.

17      Q.  AND IT IS UNDERLINED WITH A DOTTED UNDERLINE,  
18      RIGHT?

19      A.  YES.

20      Q.  INDICATING THAT IT'S BEEN RECOGNIZED AND TAGGED AS  
21      A SMART TAG; TRUE?

22      A.  THAT'S CORRECT.

23      Q.  LET'S TAKE A LOOK AT THE SOURCE OF THE DOCUMENT TO  
24      VERIFY THAT.  GET ON THE LAST PAGE.  THE PART NUMBER,  
25      "0101," HAS BEEN RECOGNIZED AND TAGGED AS A SMART TAG

1 AS THE USER TYPED; TRUE?

2 A. THAT'S CORRECT.

3 MR. SCHERKENBACH: YOUR HONOR, I WOULD LIKE TO  
4 MOVE THE ADMISSION OF EXHIBIT X-26.

5 MR. FEHER: NO OBJECTION.

6 THE COURT: X-26 MAY BE ADMITTED AS A FULL  
7 EXHIBIT.

8 (DEFENDANT'S EXHIBIT X-26 ADMITTED IN FULL)

9 MR. SCHERKENBACH: AND MAY WE HAVE THAT  
10 PUBLISHED, YOUR HONOR, TO THE JURY. THANK YOU.

11 SO LADIES AND GENTLEMEN, IN THIS EXAMPLE WE HAVE  
12 THE PART NUMBER ON THE SCREEN.

13 Q. AND THEN, MR. KLAUSNER, IT'S CORRECT THAT I'VE  
14 CORRECTLY HIGHLIGHTED THE TAGS, THE SMART TAGS  
15 INDICATING THAT THIS PART NUMBER WAS RECOGNIZED AS THE  
16 USER TYPED; TRUE?

17 A. YES, YOU HAVE.

18 Q. LET ME JUST POINT OUT ONE OTHER THING WHILE THIS IS  
19 ON THE SCREEN. THIS WAS A SMART TAG ACTUALLY THAT YOU  
20 CREATED, RIGHT?

21 A. YES.

22 Q. SO WHEN SOMEBODY BUYS OFFICE XP, THEY AREN'T GOING  
23 TO GET AN MS WEBSITE SMART TAG IN THE BOX; TRUE?

24 A. THAT'S RIGHT. IT SAYS MS WEBSITE BECAUSE I USED  
25 THE EXAMPLE FROM THE MICROSOFT WEBSITE TO CREATE THIS.

1 Q. YES, YOU JUST DIDN'T CREATE YOUR OWN SPECIAL NAME,  
2 RIGHT, FOR THE TAG?  
3 A. THAT'S CORRECT.  
4 Q. YOU COULD HAVE NAMED IT ANYTHING YOU WANTED, RIGHT?  
5 A. THAT'S CORRECT.  
6 Q. NOW, LET'S GO BACK TO THE QUESTION OF WHETHER  
7 LOOKING AT THE SURROUNDING TEXT FOR SMART TAGS CAN  
8 QUALIFY AS ANALYSIS. IN YOUR OPINION IT DOES; TRUE?  
9 A. YES.  
10 Q. AND IN PARTICULAR, IF WE PUT UP ELEMENT D AGAIN  
11 FROM YOUR CLAIM CHART, THIS IS JUST AN EXAMPLE. YOU  
12 SAY, FOR EXAMPLE, ONE EXAMPLE OF THE ANALYZING IS THIS  
13 FETCHFACTOID TEXT ROUTINE; TRUE?  
14 A. YES, THE ONE THAT YOU HIGHLIGHTED.  
15 Q. RIGHT. AND YOU SAY, ONE OF THE THINGS IT DOES IS  
16 IT LOOKS FOR AND GETS INFORMATION ABOUT SMART TAGS FROM  
17 THE DOCUMENT, RIGHT?  
18 A. RIGHT. THAT'S ANALYSIS.  
19 Q. NOW, WE'VE LOOKED AT ALL OF THESE EXHIBITS THAT  
20 SHOW THE SMART TAGS BEING RECOGNIZED AND IDENTIFIED AND  
21 SO FORTH. BUT IT'S ALSO TRUE AT THE TIME OF  
22 RECOGNITION, THE PRODUCT KNOWS WHERE THE SMART TAGS ARE  
23 LOCATED; RIGHT?  
24 A. IT STORES INFORMATION AT RECOGNITION TIME ABOUT  
25 SOMETHING CALLED A BOOKMARK --

1 Q. RIGHT.

2 A. -- FOR THE SMART TAG. THE BOOKMARK CONTAINING YET  
3 INSIDE IT ANOTHER THING CALLED THE PROPERTY BAG, AND  
4 THE PROPERTY BAG CONTAINING WITHIN IT A SERIES OF  
5 PIECES OF INFORMATION, AS I'VE SAID BEFORE, ABOUT WHAT  
6 THE SMART TAG IS, WHAT TYPE, HOW LONG, WHERE IT STARTS,  
7 THINGS LIKE THAT.

8 Q. LET ME JUST -- JUST TO MAKE THAT CONCRETE HERE,  
9 WE'LL PUT UP, THIS IS W-26. SO AT THE TIME OF  
10 RECOGNITION, THE PROGRAM NOT ONLY KNOWS WHAT THE USER  
11 HAS TYPED, NAME, ADDRESS, PLACE, DATE, TIME, BUT THE  
12 PROGRAM KNOWS WHERE IN THE DOCUMENT EACH OF THESE  
13 PIECES OF INFORMATION IS; TRUE?

14 A. WELL, THE PROGRAM, THE PROGRAM KNOWS -- THE PROGRAM  
15 STORES THAT INFORMATION.

16 Q. AND, IN FACT, THAT INFORMATION IS DETERMINED AT THE  
17 TIME OF RECOGNITION, RIGHT, THE LOCATION INFORMATION?

18 A. THE LOCATION OF WHERE THE SMART TAG IS IS STORED BY  
19 THE PROGRAM AT RECOGNITION TIME.

20 Q. RIGHT. WELL, AND TO STORE IT AT RECOGNITION TIME,  
21 THE PROGRAM HAS TO KNOW WHAT THE INFORMATION IS --

22 A. OH, YES, SURE, ABSOLUTELY.

23 Q. ALL RIGHT. NOW, YOU AGREE THAT FINDING A  
24 RECOGNIZED SMART TAG IN THE DOCUMENT IS NOT ANALYSIS;  
25 TRUE?

1       A.   I DON'T KNOW THAT I WOULD AGREE WITH YOUR  
2       STATEMENT.

3       Q.   DO YOU HAVE YOUR BOOK FROM LAST TIME, THE BINDER  
4       THAT WE GAVE YOU IN FRONT OF YOU?

5       A.   I HAVE IT.

6       Q.   WE'RE GOING TO TAKE A LOOK AT YOUR DEPOSITION, YOUR  
7       AUGUST 2ND DEPOSITION, PAGE 307, LINES 15 THROUGH 19.  
8       LET ME KNOW WHEN YOU'RE THERE.

9       A.   AUGUST 2ND?

10      Q.   SECOND, YES.

11      A.   PAGE 3 --

12      Q.   -- 07, BEGINNING AT LINE 15.

13      A.   I HAVE IT.

14      Q.   NOW, IS IT CORRECT THAT YOU WERE ASKED THE  
15      FOLLOWING QUESTION AND GAVE THE FOLLOWING ANSWER.

16      A.   I'M SORRY, LINE NUMBER AGAIN WAS?

17      Q.   FIFTEEN.   ARE YOU THERE?

18      A.   I HAVE IT, YES.

19      Q.   SO IS IT CORRECT THAT YOU WERE ASKED THE FOLLOWING  
20      QUESTION AND GAVE THE FOLLOWING ANSWER.

21               "QUESTION:  IS THE ANALYSIS THAT YOU REFER TO IN  
22      YOUR CLAIM CHART SIMPLY FINDING THE SMART TAG WITHIN  
23      THE DOCUMENT?

24               ANSWER, I'M CHECKING.  NO."

25      A.   CORRECT, I SAID THAT IT'S NOT SIMPLY FINDING,

1 RIGHT.

2 Q. NOW, LIKEWISE, LOCATING WHERE A RECOGNIZED SMART  
3 TAG IS IN THE DOCUMENT IS NOT ANALYSIS; TRUE?

4 A. YES, THAT'S TRUE, I SAID SIMPLY LOCATING OR THE  
5 EQUIVALENT.

6 Q. LOCATING IS NOT ANALYSIS, RIGHT?

7 A. AND YOU'RE POINTING TO SOMEPLACE IN PARTICULAR?

8 Q. WELL, I'M ASKING -- JUST ASKING YOU THE QUESTION  
9 RIGHT NOW WITHOUT READING THE DEPOSITION. YOU AGREE  
10 THAT LOCATING WHERE A RECOGNIZED SMART TAG IS IN THE  
11 DOCUMENT IS NOT ANALYSIS; TRUE?

12 A. I AGREE THAT WHEN LOCATING WITH A SIMPLE POINTER,  
13 IT'S NOT ANALYSIS.

14 Q. WELL, LET'S TAKE A LOOK AT YOUR DEPOSITION, SAME  
15 DAY, PAGE 308, LINES 9 THROUGH 18. LET ME KNOW WHEN  
16 YOU'RE THERE.

17 A. I HAVE IT.

18 Q. IS IT CORRECT THAT YOU ASKED THE FOLLOWING  
19 QUESTIONS AND GAVE THE FOLLOWING ANSWERS.

20 "QUESTION: WHAT DO YOU UNDERSTAND THE WORD  
21 FINDING TO MEAN?

22 ANSWER: TO LOCATE WHERE THE SMART TAG IS.

23 QUESTION: OKAY. USING THAT DEFINITION DO YOU  
24 BELIEVE LOCATING THE -- WHERE THE SMART TAG IS IS THE  
25 ANALYSIS THAT YOU RELY UPON IN YOUR EXPERT REPORT FOR



1 FINDING THAT SMART TAGS INFRINGES?

2 ANSWER: LOCATING IS NOT ANALYSIS."

3 THAT WAS YOUR TESTIMONY, RIGHT?

4 A. RIGHT.

5 Q. NOW, YOU ALSO AGREE THAT FETCHING OR RETRIEVING A  
6 RECOGNIZED SMART TAG FROM THE DOCUMENT IS NOT ANALYSIS;  
7 TRUE?

8 A. IF IT'S A SIMPLE FETCH, THAT'S CORRECT.

9 Q. AND YOU AGREE THAT COPYING AND PASTING IS NOT  
10 ANALYSIS EITHER, RIGHT?

11 A. CORRECT.

12 Q. NOW, I WENT THROUGH SOME OF THE EXAMPLES YOU DID OF  
13 ACTUAL SMART TAGS, INCLUDING -- I'LL JUST PUT ONE BACK  
14 UP ON THE SCREEN, THE MR. HEDLOY EXAMPLE. MAY WE HAVE  
15 EXHIBIT T-26 ON THE SCREEN, RIGHT. I'M TRYING TO  
16 REFRESH YOUR RECOLLECTION, OKAY?

17 A. SURE.

18 Q. ACTUALLY, FOR THE PROGRAM TO RECOGNIZE MR. HEDLOY'S  
19 NAME OR ANY NAME, YOU HAD TO TURN ON THE PERSON NAME  
20 RECOGNIZER IN YOUR VERSION OF OFFICE XP; ISN'T THAT  
21 TRUE?

22 A. THAT'S CORRECT.

23 Q. SO WHEN SOMEBODY BUYS XP AND INSTALLS IT, THE  
24 PERSON NAME RECOGNIZER IS OFF BY DEFAULT; RIGHT?

25 A. CORRECT.

1 Q. AND I DON'T HAVE A SCREEN CAPTURE OF IT, BUT YOU  
2 RECALL ONE OF THE ACTIONS YOU DEMONSTRATED WAS  
3 INSERTING AN ADDRESS FOR MR. HEDLOY, YOU HAD HIS NAME  
4 ON THE SCREEN AND THEN HIS ADDRESS POPPED IN; DO YOU  
5 REMEMBER THAT?

6 A. YES.

7 Q. SO FOR THAT TO HAPPEN YOU HAD TO, AHEAD OF TIME,  
8 PUT MR. HEDLOY'S ADDRESS INFORMATION INTO OUTLOOK;  
9 TRUE?

10 A. YES.

11 Q. BECAUSE OTHERWISE THE PROGRAM WOULDN'T HAVE HAD ANY  
12 ADDRESS TO INSERT, RIGHT?

13 A. EXACTLY. I THINK I SHOWED THE JURY THE SINGLE  
14 CONTACT.

15 Q. ALL RIGHT. NOW, ANOTHER EXAMPLE OF ANALYSIS THAT  
16 YOU USE -- LET ME JUST PUT UP THIS SAME COPY OF YOUR  
17 BOARD FOR ELEMENT D, AND I HAVE TO SCROLL UP A LITTLE  
18 BIT BECAUSE YOU SAY -- AT THE BOTTOM THERE'S THIS  
19 SECTION ALSO. DO YOU SEE WHERE I AM?

20 A. YES.

21 Q. AND THIS IS -- I TAKE IT, IN YOUR OPINION, THESE  
22 ARE ADDITIONAL EXAMPLES OF WHAT, IN YOUR VIEW, IS THE  
23 ANALYSIS REQUIRED BY THE CLAIM?

24 A. YES.

25 Q. LET ME JUST BRACKET THAT IN GREEN SO WE KNOW WHAT

1 WE'RE TALKING ABOUT. AND WE ACTUALLY TALKED A LITTLE  
2 BIT ABOUT TRIMTITLE ALREADY TODAY, RIGHT?  
3 A. THAT'S CORRECT.  
4 Q. WHAT I WANT TO ASK YOU ABOUT NOW IS THE IDEA OF  
5 LOOKING AT THE XML REPRESENTATION OF SMART TAGS AND  
6 ANALYZES THE XML. DO YOU SEE WHERE I AM?  
7 A. CORRECT, I SEE.  
8 Q. JUST SO THE JURY UNDERSTANDS, IT SOUNDS TECHNICAL,  
9 BUT WHAT YOU ARE REFERRING TO THERE IS THE SOURCE THAT  
10 WE LOOKED AT FOR THESE SCREEN SHOTS, RIGHT? SO FOR  
11 EXAMPLE, IF I LOOK AT -- FOR "MR. ATLE HEDLOY, JR." AND  
12 "SEPTEMBER 15, 2004," WHAT WE'RE LOOKING AT WHEN WE SAY  
13 THAT THOSE ITEMS HAVE BEEN RECOGNIZED AND TAGGED AS  
14 SMART TAGS, THESE ARE XML TAGS, RIGHT?  
15 A. YES.  
16 Q. OKAY. SO THE JURY HAS SEEN XML IN THESE EXHIBITS,  
17 FOR EXAMPLE, T-26, THAT DESCRIBE THE SCREEN SHOTS,  
18 RIGHT?  
19 A. YES.  
20 Q. NOW THAT XML, IT ISN'T TYPED BY THE USER; RIGHT?  
21 A. THAT'S CORRECT.  
22 Q. THAT -- THE PROGRAM AUTOMATICALLY PUTS THAT IN AT  
23 THE TIME THE SMART TAG IS RECOGNIZED; RIGHT?  
24 A. YES, YOU'VE CREATED THIS EXAMPLE.  
25 Q. NOW, I WANT TO TALK A LITTLE BIT ABOUT WHAT THE

1 USER, THE ACTIONS THE USER HAS TO TAKE TO GET FROM ONCE  
2 THE SMART TAG IS RECOGNIZED TO AN ACTION. ALL RIGHT?

3 A. OKAY.

4 Q. SO IF WE START WITH JUST A BLANK WORD DOCUMENT,  
5 WHICH IS JUST WHAT I'VE PUT UP ON YOUR SCREEN THERE,  
6 OKAY -- FIRST OF ALL, YOU RECOGNIZE THIS AS JUST A  
7 BLANK MICROSOFT WORD DOCUMENT?

8 A. YES.

9 MR. SCHERKENBACH: YOUR HONOR, MAY THE JURY SEE  
10 THIS DEMONSTRATION SO THEY CAN FOLLOW ALONG. THANK  
11 YOU.

12 Q. AND I'VE MADE THE FONT REALLY BIG, I HOPE, SO WE  
13 ALL CAN SEE IT, SO IT'S 26.5. DO YOU SEE THAT?

14 A. YES, THANK YOU.

15 Q. SO TO EVER GET TO A SMART TAG ACTION, THE FIRST  
16 THING THE USER HAS TO DO IS TYPE SOME TEXT; RIGHT?

17 A. THAT'S RIGHT.

18 Q. SO LET'S DO THAT. "DAVID KLAUSNER." SO I'VE TYPED  
19 "DAVID KLAUSNER," CORRECT?

20 A. THAT'S RIGHT.

21 Q. NOW, I'M GOING TO HIT "RETURN," AND I'M GUESSING I  
22 DON'T HAVE THE PERSON NAME RECOGNIZER ON SO IT HASN'T  
23 BEEN RECOGNIZED. BEAR WITH ME A MINUTE.

24 ACTUALLY, JUST SO THE JURY UNDERSTANDS WHAT I  
25 JUST DID, LET ME JUST CANCEL OUT OF THIS. THERE IS A

1       SERIES OF MENUS IN MICROSOFT WORD THAT ALLOW A USER TO  
2       CONTROL THE WAY SMART TAGS WORK, RIGHT?

3       A.   THAT'S RIGHT.

4       Q.   AND THE WAY YOU GET TO THOSE MENUS, IS YOU CLICK ON  
5       THE TOOLS BUTTON LIKE I'M DOING NOW; DO YOU SEE THAT?

6       A.   WELL, YOU SELECT THE TOOLS MENU.

7       Q.   OKAY, YOU SELECT THE TOOLS MENU.  SO IF I CLICK ON  
8       THAT, I HAVE A NUMBER OF OPTIONS UNDER TOOLS; RIGHT?

9       A.   THAT'S RIGHT.

10      Q.   AND IF I SELECT AUTO CORRECT OPTIONS, I'M GOING TO  
11      CLICK ON THAT, I CAN GET TO WHAT'S CALLED THE AUTO  
12      CORRECT -- IT IS CALLED A DIALOGUE BOX; IS THAT RIGHT?

13      A.   YES.

14      Q.   AND ONE OF THE THINGS I CAN DO IN THIS DIALOGUE BOX  
15      IS CHANGE THE WAY SMART TAGS BEHAVE IF I CLICK ON A  
16      SMART TAGS TAB, RIGHT?

17      A.   YES.

18      Q.   AND ONE OF THE THINGS USERS CAN DO IS TURN OFF  
19      SMART TAGS ALTOGETHER; TRUE?

20      A.   THAT'S CORRECT.

21      Q.   SO IF I WANT THEM ON, THIS BOX UP HERE THAT SAYS  
22      "LABEL TEXT WITH SMART TAGS," THAT HAS TO BE CHECKED,  
23      CORRECT?

24      A.   THAT'S CORRECT.

25      Q.   AND THEN WHAT FOLLOWS, ACTUALLY, IS A LIST OF THE

1 OUT-OF-THE-BOX SMART TAGS THAT COME WITH MICROSOFT  
2 WORD; RIGHT?

3 A. YES, EXCEPT FOR THE LAST ONE.

4 Q. YES, AND I THINK THAT'S THERE, I'LL JUST REPRESENT  
5 TO YOU I THINK THAT'S THERE BECAUSE THAT'S YOUR CUSTOM  
6 SMART TAG.

7 A. THAT'S RIGHT.

8 Q. WE'LL LOOK AT THAT. SO NOW THAT I'VE ALLOWED SMART  
9 TAGS TO WORK AND ALL THESE BOXES ARE CHECKED, I'M GOING  
10 TO EXIT OUT OF HERE, HITTING "OKAY." LET ME RETYPE THE  
11 NAME AND SEE IF WE'LL GET IT RECOGNIZED. THE DANGER OF  
12 LIVE DEMONSTRATIONS. LET ME SEE WHY IT'S NOT BEING  
13 RECOGNIZED.

14 MR. FEHER: OBJECTION.

15 THE COURT: TO THE COMMENTARY?

16 MR. FEHER: YES, THANK YOU.

17 THE COURT: MR. SCHERKENBACH --

18 MR. SCHERKENBACH: I APOLOGIZE.

19 (PAUSE)

20 MR. SCHERKENBACH: BEAR WITH ME. THERE WE GO.

21 I GUESS WHEN YOU CHANGE THE OPTION YOU HAVE TO RESTART.

22 MR. FEHER: OBJECTION, YOUR HONOR, TESTIFYING  
23 AGAIN.

24 MR. SCHERKENBACH: ALL RIGHT. IF THAT'S NOT  
25 HELPFUL, I'LL WITHDRAW IT, YOUR HONOR.

1 Q. WE'RE NOW LOOKING AT -- WE HAD A BLANK WORD  
2 DOCUMENT. I'LL JUST DO IT OVER AGAIN. AND LET ME MAKE  
3 THE FONT BIG.

4 SO TO GET TO A SMART TAG ACTION, THE FIRST THING  
5 A USER HAS TO DO IS TYPE SOME TEXT; RIGHT?

6 A. THAT'S CORRECT.

7 Q. AND THAT TEXT, IF IT'S OF A PARTICULAR TYPE LIKE A  
8 NAME, WILL BE RECOGNIZED AS A SMART TAG; TRUE?

9 A. YES.

10 Q. AND IN THE CASE OF A PERSON NAME, WE KNOW IT'S BEEN  
11 RECOGNIZED IN PART BECAUSE IT GETS THE DOTTED PURPLE  
12 UNDERLINE UNDER IT; CORRECT?

13 A. THAT'S CORRECT.

14 Q. NOW, IN ORDER TO GET TO A LIST OF ACTIONS FOR THE  
15 DAVID KLAUSNER NAME, THE USER HAS TO EITHER MOVE THE  
16 MOUSE OVER THE NAME, "DAVID KLAUSNER," OR USE THE  
17 KEYBOARD TO PUT THE CURSOR IN THE NAME; TRUE?

18 A. YES, TO SELECT THE MENU, THEY HAVE TO DO ONE OF  
19 THOSE THINGS.

20 Q. SO LET'S JUST ADD ANOTHER SMART TAG HERE. PUT IN  
21 MY NAME. SO IF I WANT TO TAKE ACTIONS FOR "DAVID  
22 KLAUSNER" INSTEAD OF "FRANK SCHERKENBACH," I HAVE TO  
23 MOVE THE MOUSE TO THE NAME THAT I'M INTERESTED IN;  
24 TRUE?

25 A. OR THE CURSOR.

1 Q. OR THE CURSOR. I JUST HAPPEN TO BE USING A  
2 POINTING DEVICE HERE. AND IF I MOVE MY MOUSE OVER  
3 DAVID KLAUSNER, A LITTLE BUTTON POPS UP WITH AN "I"  
4 INSIDE OF IT; CORRECT?

5 A. YES.

6 Q. AND YOU ONLY CAN GET THAT BUTTON, AGAIN, IF YOU  
7 MOVE YOUR CURSOR OVER THE NAME USING A MOUSE OR  
8 KEYBOARD; RIGHT?

9 A. YES.

10 Q. AND YOU CAN'T EVER GET TO AN ACTION FOR A SMART TAG  
11 WITHOUT HAVING THIS BUTTON APPEAR; TRUE?

12 A. IT'S LIKELY TRUE. I KNOW OF A CASE WHERE IT'S --  
13 IT'S POSSIBLE TO HAVE THE SMART TAG NOT SHOW UP WITH  
14 THE UNDERLINE THAT WE SEE HERE. THERE'S AN OPTION TO  
15 DO THAT, BUT I THINK GENERALLY YOUR STATEMENT IS TRUE.

16 Q. SO FOR THE EXAMPLE THAT YOU SHOWED THE JURY IN YOUR  
17 CLAIM CHARTS OF A PERSON NAME, LET'S STICK WITH THAT,  
18 YOU CAN'T GET TO THE ACTIONS FOR THAT SMART TAG WITHOUT  
19 EITHER HOVERING YOUR MOUSE OR PUTTING THE CURSOR ON THE  
20 PERSON'S NAME; TRUE?

21 A. THAT'S RIGHT --

22 Q. YOU ALSO CAN'T GET -- I'M SORRY, I DIDN'T MEAN TO  
23 CUT YOU OFF.

24 A. I'M SAYING, YES, IT'S TRUE, IN ORDER TO SELECT THE  
25 MENU YOU HAVE TO MOVE THE MOUSE OR THE CURSOR.



1 Q. AND YOU ALSO CAN'T GET TO THE SELECTION OF AN  
2 ACTION WITHOUT HAVING THIS LITTLE BUTTON POP UP; TRUE,  
3 IN THE PERSON NAME EXAMPLE?

4 A. YES -- WELL, IT'S PROBABLY TRUE.

5 Q. NOW, THE NEXT THING THAT HAS TO HAPPEN TO GET TO  
6 THE MENU IS YOU HAVE TO SELECT THIS BUTTON IN SOME WAY;  
7 TRUE?

8 A. YOU ARE SELECTING THE MENU; RIGHT?

9 Q. WELL, IS THIS -- IS IT YOUR TESTIMONY THAT THE  
10 LITTLE BOX WITH THE "I" IN FRONT OF IT IS A MENU?

11 A. YES, IT STANDS FOR THE MENU.

12 Q. IT'S A MENU?

13 A. IT STANDS FOR THE MENU.

14 Q. WE'LL COME BACK TO THAT. BUT IN ANY CASE, YOU HAVE  
15 TO SELECT IT, DON'T YOU, THE USER HAS TO SELECT THAT  
16 BUTTON?

17 A. THE USER NEEDS TO SELECT THE MENU. IN THE SAME WAY  
18 THAT THE USER SELECTED THE MENU WHEN YOU ARE UP HERE  
19 AND YOU CHANGED THE SMART TAG OPTIONS THAT THE JURY  
20 SAW, YOU HAVE TO MOVE YOUR CURSOR OR YOUR MOUSE UP  
21 THERE TO -- AND TOOLS HIGHLIGHTS AND THEN YOU SELECT  
22 THE TOOLS MENU.

23 Q. LET ME BACK OUT OF THIS. IS IT YOUR TESTIMONY THAT  
24 A USER CAN GET TO THE ACTIONS FOR EITHER OF THE NAMES  
25 ON THE SCREEN, "DAVID KLAUSNER," "FRANK SCHERKENBACH,"

1 WITHOUT SELECTING ONE OF THOSE NAMES?

2 A. IT'S MY TESTIMONY THAT IN ORDER TO SELECT THE MENU

3 FOR THE PARTICULAR NAME, THE USER HAS TO EITHER MOVE

4 THE CURSOR, THAT'S THIS "I" BEAM, OR THE MOUSE.

5 Q. AND IN PARTICULAR, THE USER HAS TO MOVE THE CURSOR

6 OR THE MOUSE OVER THE NAME THAT THEY ARE INTERESTED IN;

7 TRUE?

8 A. THAT'S CORRECT, TO SELECT THE MENU.

9 Q. NOW, SO WE DON'T GET IN A DISAGREEMENT ABOUT

10 WHETHER IT IS A BUTTON OR MENU. LET'S CALL IT THE BOX

11 WITH THE "I," OKAY, CAN WE AGREE TO THAT?

12 A. SURE.

13 Q. NOW, BEFORE YOU EVER GET TO A LIST OF ACTIONS, THE

14 USER HAS TO SELECT THE BOX WITH THE "I"; TRUE?

15 A. THE USER SELECTS THE MENU, CORRECT, THE BOX WITH

16 THE "I."

17 Q. AND THE USER CAN SELECT THAT BOX EITHER BY MOVING

18 THE MOUSE IN THE WAY I'M DOING NOW, OR THERE'S A

19 KEYBOARD ALTERNATIVE, WHEN YOU DON'T HAVE A MOUSE;

20 TRUE?

21 A. THAT'S CORRECT.

22 Q. AND SO ONCE I -- BY THE WAY, IT'S CORRECT THAT WHEN

23 THE USER SELECTS THE BUTTON -- I TAKE THAT BACK --

24 WHEN THE USER SELECTS THE BOX WITH THE "I" IN IT BY

25 MOVING THE MOUSE, THAT BOX CHANGES COLOR IN APPEARANCE;

1 TRUE, DO YOU SEE THAT ON THE SCREEN?

2 A. YES.

3 Q. AND, NOW, TO GET TO THE LIST OF SMART TAG ACTIONS,

4 THE NEXT THING THE USER HAS TO DO IS CLICK ON IT, THE

5 BOX WITH THE "I"; TRUE?

6 A. OR USE THE KEYBOARD SHORTCUT.

7 Q. OR USE A KEYBOARD SHORTCUT, RIGHT. BUT ONE WAY OR

8 THE OTHER THE USER HAS TO SELECT THE BOX WITH THE "I"

9 BY SOME ACTION; TRUE?

10 A. RIGHT, SELECTING THE MENU.

11 Q. SO NOW I'M GOING TO DO THAT WITH THE --

12 THE COURT: WE'LL SAVE THAT FOR AFTER OF THE

13 RECESS, MR. SCHERKENBACH.

14 MEMBERS OF THE JURY MAY RETURN TO THE JURY ROOM

15 FOR THE MORNING RECESS.

16 (JURY EXCUSED)

17 THE COURT: YOU MAY STEP DOWN, MR. KLAUSNER.

18 (WITNESS EXCUSED)

19 THE COURT: COURT WILL BE IN RECESS.

20 (MORNING RECESS 11:15 - 11:33 A.M.).

21 THE COURT: BRING THE JURY IN, PLEASE.

22 (JURY PRESENT)

23 THE COURT: PLEASE BE SEATED, LADIES AND

24 GENTLEMEN.

25 MR. SCHERKENBACH?

1           MR. SCHERKENBACH:  THANK YOU, YOUR HONOR.  MAY  
2       WE HAVE THE COMPUTER SCREEN BACK UP, PLEASE.

3       Q.  ALL RIGHT, MR. KLAUSNER, WE HAD GOTTEN TO THE POINT  
4       WHERE THE USER HAD HOVERED THE MOUSE OVER THE NAME AND  
5       THEN ALSO HOVERED THE MOUSE OVER THE BOX WITH THE  
6       LITTLE "I," CORRECT?

7       A.  THAT'S WHAT IT LOOKS LIKE.  THE USER HAS PLACED THE  
8       MOUSE OVER -- OR YOU HAVE PLACED THE MOUSE OVER THE  
9       MENU SELECTION.

10      Q.  THE BOX WITH THE LITTLE "I," RIGHT?

11      A.  YES.

12      Q.  NOW, THE NEXT THING THE USER HAS TO DO TO GET THE  
13      MENU TO POP UP IS IF THEY'RE USING A MOUSE, CLICK ON  
14      THE BOX WITH THE LITTLE "I"; TRUE?

15      A.  CORRECT.

16      Q.  I'M GOING TO DO THAT.  AND THAT CAUSES A MENU FOR  
17      ACTIONS TO POP UP; TRUE?

18      A.  WELL, TO DROP DOWN, YES.

19      Q.  DROP DOWN, OKAY.

20      A.  YES.

21      Q.  AND, FINALLY, IF THE USER WANTS TO SELECT ONE OF  
22      THE ACTIONS FOR THE NAME, FOR EXAMPLE, "INSERT  
23      ADDRESS," THEY HAVE TO MOVE THEIR MOUSE DOWN TO  
24      WHICHEVER ACTION THEY WANT; TRUE?

25      A.  WELL, AS AN EXAMPLE, YOU CAN ALWAYS USE THE

1       KEYBOARD ALSO.

2       Q.   OR THE KEYBOARD?

3       A.   SURE.

4       Q.   BUT EITHER WAY, THE USER HAS TO MAKE A DECISION

5       HERE AS TO WHICH ACTION THEY WANT; TRUE?

6       A.   RIGHT.  THE USER HAS TO CHOOSE AN ENTRY FROM THE

7       MENU.

8       Q.   AND THEN, FINALLY, THE USER HAS TO SELECT THE

9       ACTION FROM THE MENU THAT THEY'RE INTERESTED IN;

10      CORRECT?

11      A.   YES.  THE USER CHOOSES A MENU ITEM.

12      Q.   AND IF THE USER IS USING A MOUSE, THE WAY THAT

13      HAPPENS IS EITHER CLICKING AGAIN ON THE ACTION OR IF

14      YOU HAVE HELD YOUR MOUSE BUTTON DOWN, YOU CAN JUST DRAG

15      IT AND RELEASE IT; TRUE?

16      A.   YES.

17      Q.   NOW, LET'S TALK ABOUT THIS BUTTON VERSUS MENU

18      ISSUE.  LOOKING AT WHAT'S ON THE SCREEN IN FRONT OF US,

19      IS THAT A BUTTON OR A MENU OR BOTH?

20      A.   YOU MEAN THIS THING HERE?

21      Q.   YES.

22      A.   THAT'S A MENU.

23      Q.   SO THIS LITTLE BOX WITH THE "I," THAT'S A MENU?

24      A.   THAT IS WHAT DROPS THE MENU DOWN.

25      Q.   IS IT A MENU?

1     A.  YES, IT'S PART OF THE MENU.

2     Q.  AND --

3     A.  IT'S STILL UP ON THE SCREEN.

4     Q.  YOU FEEL THE SAME WAY IF WE'RE TALKING ABOUT JUST

5     THE BOX WITH THE "I" ON THE SCREEN, THAT'S A MENU?

6     A.  THAT -- THE BOX WITH THE "I" AS WE SEE RIGHT HERE?

7     Q.  YES.

8     A.  THAT STANDS FOR THE MENU, THE SAME WAY THAT THE

9     TOOLS STANDS FOR THE TOOLS MENU.

10    Q.  MY QUESTION IS WHETHER IT IS A MENU OR NOT, IS THE

11    BOX WITH THE "I" ITSELF A MENU?

12    A.  WELL, ON THE FACE OF IT IT'S NOT.  I MEAN, YOU CAN

13    SEE IT IS NOT THE MENU, BUT AS SOON AS YOU CHOOSE IT,

14    THERE IT GOES.  IT STANDS FOR THE MENU.

15    Q.  DO YOU RECALL DURING YOUR TESTIMONY YOU POINTED TO

16    A FEW DEFINITIONS IN THE MICROSOFT COMPUTER DICTIONARY,

17    DO YOU REMEMBER THAT GENERALLY?

18    A.  YES.

19    Q.  THAT WAS EXHIBIT 341?

20    A.  YES.

21    Q.  NO, I'M SORRY, BACK UP FOR A MOMENT.  I GOT AHEAD

22    OF MYSELF.  IN YOUR TESTIMONY ABOUT WHETHER A BUTTON IS

23    A MENU, YOU ACTUALLY SHOWED THE JURY AN INTERNAL

24    MICROSOFT DOCUMENT THAT WAS EXHIBIT 341; DO YOU RECALL

25    THAT?

1       A.   I RECALL THE DOCUMENT.   I'D IMAGINE YOU WOULD HAVE  
2       THE NUMBER RIGHT.

3               MR. SCHERKENBACH:   YOUR HONOR, THIS EXHIBIT 341  
4       IS IN EVIDENCE, MAY THE JURY SEE IT.

5       A.   THAT'S IT.

6       Q.   THAT'S IT.   AND WE HAVE IT ON THE SCREEN; CORRECT?

7       A.   YES.

8       Q.   AND CAN WE PULL UP THE BOTTOM PART OF THE FIRST  
9       PAGE.   I BELIEVE THIS IS THE PART YOU POINTED TO IN  
10      YOUR TESTIMONY; IS THAT RIGHT?

11      A.   YES.

12      Q.   AND THE TITLE IS "SMART TAG ACTIONS BUTTON"; RIGHT?

13      A.   CORRECT.

14      Q.   AND THE SCREEN SHOT SHOWS THE LITTLE BOX WITH THE  
15      "I" IN IT; TRUE?

16      A.   TRUE.

17      Q.   AND THEN IT SHOWS A LIST OF ACTIONS THAT HAS  
18      DROPPED DOWN; TRUE?

19      A.   THAT'S CORRECT.

20      Q.   THIS DOCUMENT DOESN'T SAY THAT A BUTTON IS A MENU;  
21      RIGHT?

22      A.   IT DOESN'T HAVE THAT TEXT, NO, NOT WHAT I CAN SEE.

23      Q.   NOW, LET'S TALK ABOUT THE MICROSOFT COMPUTER  
24      DICTIONARY.   THIS IS EXHIBIT 310 IN EVIDENCE.

25               AND, YOUR HONOR, MAY THE JURY SEE THIS AS WELL.

1           THERE'S A DEFINITION OF "BUTTON" IN THE  
2   MICROSOFT COMPUTER DICTIONARY, ISN'T THERE?  
3   A.   IT LOOKS LIKE THERE IS.  
4   Q.   HAVE YOU EVER SEEN THIS DEFINITION BEFORE?  
5   A.   I HAVEN'T LOOKED AT THIS BEFORE.  
6   Q.   IF YOU LOOK AT DEFINITION ONE -- FIRST OF ALL, JUST  
7   READ IT AND THEN I'LL HAVE A QUESTION FOR YOU.  
8   A.   I'VE READ IT.  
9   Q.   DO YOU AGREE THAT A REASONABLE DEFINITION OF BUTTON  
10   IS A "GRAPHIC ELEMENT IN A DIALOGUE BOX THAT WHEN  
11   ACTIVATED PERFORMS A SPECIFIED FUNCTION"?  
12   A.   THAT'S ONE OF THEM, YES, ONE OF THE DEFINITIONS.  
13   Q.   AND DO YOU AGREE THAT THE USER ACTIVATES A BUTTON  
14   BY CLICKING ON IT WITH A MOUSE OR IF THE BUTTON IS THE  
15   FOCUS, BY HITTING THE "RETURN" OR "ENTER" KEY?  
16   A.   THAT'S ALSO A WAY THAT THE USER CAN ACTIVATE THE  
17   BUTTON, RIGHT.  
18   Q.   LET'S TAKE A LOOK AT THE DEFINITION FOR MENU.  
19   THERE WE GO.  NOW, THE MICROSOFT DICTIONARY ALSO HAS A  
20   DEFINITION FOR "MENU"; RIGHT?  
21   A.   YES.  I HAVEN'T SEEN THIS BEFORE EITHER.  
22   Q.   OKAY.  WELL, WHY DON'T YOU TAKE A MOMENT TO READ  
23   IT, AND THEN I'LL ASK YOU A QUESTION ABOUT IT.  
24   A.   I'VE READ IT.  
25   Q.   YOU'LL AGREE WITH ME THAT THE -- WELL, STRIKE THAT.



1 FIRST OF ALL, DO YOU BELIEVE THIS IS A REASONABLE  
2 DEFINITION OF WHAT A MENU IS?

3 A. I THINK IT'S ONE OF THE DEFINITIONS, YES.

4 Q. AND YOU'LL AGREE WITH ME THAT THE DEFINITION OF A  
5 MENU IS DIFFERENT THAN THE DEFINITION OF A BUTTON,  
6 ISN'T IT?

7 A. SURE. LITERALLY THE WORDS ARE DIFFERENT.

8 Q. WELL, NOT ONLY LITERALLY ARE THE WORDS DIFFERENT,  
9 BUT AT LEAST ACCORDING TO THE MICROSOFT COMPUTER  
10 DICTIONARY THEY'RE DIFFERENT THINGS, AREN'T THEY?

11 A. CAN YOU PUT UP "BUTTON" AGAIN?

12 Q. SURE.

13 A. AND LEAVE "MENU" WHERE IT IS SO WE CAN COMPARE  
14 THEM.

15 Q. I THINK THERE IS A WAY TO DO THAT.

16 MR. SCHERKENBACH: BEAR WITH US A MOMENT WHILE  
17 WE GET THE RIGHT SIZE.

18 Q. NOW, THAT WE HAVE THE DEFINITIONS FOR "BUTTON" AND  
19 "MENU" ON THE SAME SCREEN FROM THE MICROSOFT  
20 DICTIONARY, WILL YOU AGREE WITH ME THAT THEY ARE NOT  
21 THE SAME THING?

22 A. WELL, THESE TWO DEFINITIONS ARE NOT THE SAME, BUT  
23 IN BOTH CASES, YOU HAVE A GRAPHIC ELEMENT, A MENU CAN  
24 BE A GRAPHIC ELEMENT. BUT, PLEASE, GO AHEAD.

25 Q. THEY ARE DIFFERENT; RIGHT?

1 A. WELL, THE TEXT IS DIFFERENT, BUT THEY SERVE THE  
2 SAME FUNCTION, BASICALLY.

3 Q. MR. KLAUSNER, IN TERMS OF YOUR ANALYSIS OF WHEN AN  
4 ANALYZING STEP OF THE CLAIM HAPPENS, IT'S CORRECT,  
5 ISN'T IT, THAT YOU START YOUR ANALYSIS AT THE MOMENT  
6 THE USER SELECTS ONE OF THE ACTIONS FROM THE MENU;  
7 RIGHT?

8 A. YES, AS FAR AS THE ANALYZING STEP IS CONCERNED, IT  
9 OCCURS AFTER THE USER, FOR EXAMPLE, CHOOSES "INSERT  
10 ADDRESS," AS YOU SHOW IT NOW.

11 Q. NOW, YOU'LL AGREE THAT EACH STEP IT TAKES TO GET TO  
12 THE POINT WHERE YOU CAN SELECT AN ACTION, EXECUTES ONE  
13 OR MORE COMMANDS IN THE CODE OF MICROSOFT OFFICE;  
14 RIGHT?

15 A. RIGHT.

16 Q. SO, FOR EXAMPLE, PLACING THE MOUSE CURSOR ON THE  
17 NAME, AS I JUST DID WITH "DAVID KLAUSNER," THAT CAUSES  
18 THE EXECUTION OF SOME COMMANDS IN THE SOFTWARE CODE;  
19 TRUE?

20 A. YES.

21 Q. AND IN PARTICULAR, SOME OF THE COMMANDS THAT GET  
22 EXECUTED CAUSE THE BOX WITH THE "I" IN IT TO APPEAR ON  
23 THE SCREEN; RIGHT?

24 A. THAT'S RIGHT.

25 Q. NOW, IF I MOVE MY CURSOR OVER THAT BUTTON, THAT

1       ALSO CAUSES SOME COMMANDS TO EXECUTE IN THE CODE FOR  
2       OFFICE XP; TRUE?  
3       A.   THAT'S TRUE.  
4       Q.   AND ONE OF THE THINGS THAT THAT SET OF COMMANDS  
5       DOES, IS IT CAUSES THE BUTTON TO CHANGE COLOR; TRUE,  
6       AND SHAPE?  
7       A.   YES, AS WE SEE.  
8       Q.   AND IT ACTUALLY ALSO WILL RESULT IN -- THERE'S A  
9       LITTLE LABEL THAT APPEARS, IT SAYS "SMART TAG ACTIONS";  
10      RIGHT?  
11      A.   THAT'S RIGHT.  
12      Q.   SO THAT'S ANOTHER FUNCTION THAT HAPPENS WHEN THE  
13      USER MOVES THE MOUSE OVER THE BOX WITH THE "I" IN IT;  
14      TRUE?  
15      A.   CORRECT.  
16      Q.   NOW, IF THE USER THEN CLICKS ON THAT BOX, THE LIST  
17      OF MENUS APPEARS -- STRIKE THAT -- THE LIST OF ACTIONS  
18      APPEARS; TRUE?  
19      A.   THAT'S TRUE.  
20      Q.   AND SO CLICKING ON THE BOX ALSO HAS CAUSED A NUMBER  
21      OF COMMANDS IN THE SOFTWARE FOR OFFICE XP TO EXECUTE;  
22      RIGHT?  
23      A.   THAT'S RIGHT.  
24      Q.   AND THOSE COMMANDS INCLUDE THE COMMANDS THAT  
25      ACTUALLY CREATE THIS LIST OF ACTIONS ON THE SCREEN;

1 TRUE?

2 A. YOU'RE RIGHT.

3 Q. NOW, YOU AGREE THAT THE ARENDI PATENT DOES NOT  
4 REQUIRE THE USER TO SELECT TEXT IN ANY WAY; RIGHT?

5 A. IT DOESN'T REQUIRE THE SELECTION OF -- RIGHT, OF  
6 THE USER TO SELECT TEXT.

7 Q. AND IT'S ALSO IN YOUR OPINION, IT'S ALSO THE CASE  
8 THAT THE ARENDI'S PATENT DOES NOT REQUIRE THE USER TO  
9 SELECT THE TEXT, PARTICULARLY BY PLACING A MOUSE  
10 POINTER OVER TEXT; TRUE?

11 A. IT DOES NOT REQUIRE IT -- THAT.

12 MR. SCHERKENBACH: OKAY, WE CAN TAKE THAT DOWN.

13 Q. NOW, YOUR CHARTS -- MAY I HAVE THE ELMO, PLEASE.

14 WE'VE LOOKED AT A NUMBER OF THESE CHARTS. IN  
15 VARIOUS PLACES YOU PROVIDE EXAMPLES OF THE SOURCE CODE  
16 THAT YOU BELIEVE ARE RELEVANT TO YOUR ANALYSIS; TRUE?

17 A. THAT'S RIGHT.

18 Q. INCIDENTALLY, YOU NEVER SHOWED ANY PIECE OF THE  
19 SOURCE CODE SPECIFICALLY TO THE JURY; RIGHT?

20 A. I DON'T THINK I DID.

21 Q. NOW, YOU SAY IN ELEMENT D -- MAYBE I CAN CALL UP A  
22 CLEANER COPY OF THIS -- TRY AGAIN. ALL RIGHT.

23 CAN YOU BLOW UP THE SOURCE CODE SECTION OF IT,  
24 PLEASE.

25 SO ON YOUR CHART ONE OF THE THINGS YOU SAY IS --

1 I'M JUST GOING TO CIRCLE HERE IN THE MIDDLE THAT THIS  
2 FETCHFACTOID PIECE OF CODE CALLS ANOTHER PIECE OF CODE,  
3 WHICH IS GETBOOKMARK; RIGHT?

4 A. GENERALLY, YES. IT'S NOT THE WHOLE NAME, BUT  
5 YOU'RE RIGHT.

6 Q. I'M JUST TRYING TO USE A -- YOU UNDERSTAND IF I USE  
7 THE SHORTHAND, YOU'LL KNOW WHAT I'M REFERRING TO?

8 A. YES, WE'RE REFERRING TO -- WELL, I THINK YOU'RE  
9 REFERRING TO THAT.

10 Q. RIGHT. SO IN SUBSTANCE HERE YOU ARE SAYING THIS  
11 FETCHFACTOID ROUTINE -- GET RID OF THAT ONE -- CALLS  
12 THE GETBOOKMARK ROUTINE; RIGHT?

13 A. RIGHT.

14 Q. HAVE YOU ACTUALLY LOOKED AT THE CODE FOR  
15 FETCHFACTOID THAT'S REFERENCED IN YOUR CHART?

16 A. YES.

17 Q. WELL, THEN, YOU KNOW IT DOESN'T EVEN ACTUALLY  
18 MENTION THE GETBOOKMARK ROUTINE, DOES IT?

19 A. IT CERTAINLY CALLS, THROUGH A SERIES OF CALLS, THAT  
20 ULTIMATELY CALLS GETBOOKMARKFROMIBKF, IF IT PHYSICALLY  
21 DOESN'T CALL IT DIRECTLY.

22 Q. WELL, LET'S TAKE A LOOK AT IT. BEAR WITH ME A  
23 MOMENT. SO WE HAVE ON THE SCREEN EXHIBIT 243, WHICH IS  
24 IN EVIDENCE, AND IF WE CAN TURN TO -- FIRST OF ALL, DO  
25 YOU SEE THAT ON YOUR SCREEN, MR. KLAUSNER?

1 A. YES, I SEE THE FIRST PAGE OF THE EXHIBIT 243.

2 Q. RIGHT. AND THIS EXHIBIT ACTUALLY INCLUDES A LOT OF  
3 CODE WE'RE NOT GOING TO TALK ABOUT; IT IS FROM THE  
4 FACTOID.C FILE, DO YOU SEE THAT AT THE TOP?

5 SO HAVE I CORRECTLY DESCRIBED EXHIBIT 243 AS  
6 BEING A PART OF THIS ROUTINE FACTOID.C?

7 A. I SEE THE FACE PAGE OF FACTOID.C, YES.

8 Q. AND THE FETCHFACTOID ROUTINE THAT THE MENTIONED IN  
9 YOUR CLAIM CHART IS PART OF FACTOID.C, ISN'T IT?

10 A. YES.

11 Q. SO LET'S TAKE A LOOK AT THAT. SO WE'RE ON PAGE 15  
12 OF EXHIBIT 243 NOW. AND DO YOU SEE WHERE THE ROUTINE  
13 FETCHFACTOID BEGINS AT THE BOTTOM OF THAT PAGE?

14 A. YES.

15 MR. SCHERKENBACH: YOUR HONOR, CAN WE HAVE THE  
16 JURY SEE IT. THIS EXHIBIT IS IN EVIDENCE. THANK YOU.

17 Q. SO IT BEGINS THERE?

18 A. YES.

19 Q. I'D LIKE YOU TO ACTUALLY LOOK AT --

20 THE COURT: JUST A MOMENT, MR. KLAUSNER'S  
21 BATTERY HAS BECOME UNCHARGED.

22 THE WITNESS: I'M SORRY.

23 THE COURT: YOU'RE NOT USING THAT COMPUTER NOW,  
24 ARE YOU?

25 THE WITNESS: NO, I'M NOT.

1 THE COURT: CAN YOU TURN THAT OFF.

2 (WITNESS COMPLIES)

3 Q. MR. KLAUSNER, I'D LIKE YOU TO TAKE A LOOK AT THE  
4 PAPER FOR THIS ROUTINE, IT'S ONLY ABOUT A PAGE LONG,  
5 AND I'M GOING TO ASK YOU A QUESTION ABOUT IT. CAN WE  
6 PROVIDE HIM WITH EXHIBIT 243, PLEASE. THANK YOU.

7 MR. KLAUSNER, IF YOU COULD LOOK AT THE  
8 FETCHFACTOID ROUTINE WHICH BEGINS ON PAGE 15 OF EXHIBIT  
9 243 AND ENDS ON PAGE 17 OF EXHIBIT 243, AND JUST VERIFY  
10 FOR ME THAT IT DOES NOT MENTION THE GETBOOKMARK ROUTINE  
11 IDENTIFIED IN YOUR CLAIM CHART.

12 A. IT'S NOT WITHIN THE BOUNDS OF THIS SECTION OF THE  
13 SOURCE CODE.

14 Q. LET'S TAKE A LOOK AT ANOTHER ROUTINE THAT YOU  
15 IDENTIFIED. CAN I HAVE THE ELMO, PLEASE.

16 STILL IN YOUR CHART FOR ELEMENT D, THE ANALYZING  
17 ELEMENT, WHEN YOU WERE TALKING ABOUT LOOKING AT THE XML  
18 REPRESENTATION, YOU POINTED TO A ROUTINE CALLED  
19 HRGETTAGGEDDATA; DO YOU SEE THAT?

20 A. YES.

21 Q. AND YOU SAY THAT THAT IS INVOLVED IN, SOMEHOW IN  
22 ANALYZING THE SMART TAGS DATA PASSED TO THE SMART TAGS  
23 ACTION; TRUE?

24 A. YES.

25 Q. NOW, THE GETTAGGEDDATA ROUTINE IS PART OF A LARGER

1 FILE CALLED INSERTWORD.CPP, DO YOU RECALL THAT?

2 A. YES.

3 Q. AND THIS IS CODE THAT YOU REVIEWED,

4 HRGETTAGGEDDATA; IS THAT RIGHT?

5 A. YES.

6 Q. AND DO YOU RECALL THAT ONE OF THE THINGS THIS

7 ROUTINE DOES IS CHECK WHETHER THE USER IS EVEN USING

8 MICROSOFT WORD, DO YOU RECALL THAT?

9 A. VAGUELY. I HAVEN'T SEEN THE CODE IN A LITTLE  
10 WHILE.

11 Q. LET ME SHOW YOU -- WELL, WE'LL PUT UP ON THE SCREEN

12 AND THEN WE'LL SHOW YOU SOME HARD COPY. FIRST OF ALL,

13 LET ME INDICATE WHAT I'VE PUT ON THE SCREEN. THIS IS A

14 PORTION OF WHAT IS PLAINTIFF'S EXHIBIT 372, YOUR HONOR,

15 WHICH IS IN EVIDENCE, SO IF I MAY, I'D LIKE TO PUBLISH

16 THIS TO THE JURY AS WE QUESTION ON IT.

17 MR. KLAUSNER, DO YOU SEE THE -- DO YOU HAVE

18 SOMETHING ON YOUR SCREEN THERE, I HOPE?

19 A. YES.

20 Q. AND YOU CAN SEE THAT WE'RE IN A LARGER FILE CALLED

21 INSERTWORD.CPP, CORRECT?

22 A. CORRECT.

23 Q. AND ONE OF THE THINGS THAT'S IN THAT FILE IS YOUR

24 ROUTINE HRGETTAGGEDDATA; RIGHT?

25 A. YES.



1 Q. ALL RIGHT.

2 CAN WE PROVIDE THE WITNESS WITH A HARD COPY OF  
3 EXHIBIT 372 AND WE REALLY ONLY NEED TAB E INSTEAD OF  
4 THE WHOLE --

5 (EXHIBIT PROVIDED TO WITNESS)

6 A. I HAVE IT.

7 Q. ALL RIGHT. I'D LIKE YOU TO VERIFY FOR ME IN THE  
8 PORTION OF EXHIBIT 372 THAT YOU HAVE-- WELL, FIRST OF  
9 ALL, JUST TURN TO PAGE 2, AND I'M GOING TO ASK YOU TO  
10 LOOK AT A PARTICULAR PLACE IN THE CODE. PUT IT ON THE  
11 ELMO IF I COULD HAVE THE -- ACTUALLY, NO, WE'LL DO IT  
12 ON THE SCREEN.

13 ARE YOU ON PAGE 2?

14 A. YES, I AM.

15 Q. DO YOU SEE -- I'M GOING TO CIRCLE A PART OF THE  
16 CODE IN THE CENTER HERE -- DO YOU SEE WHERE I HAVE  
17 CIRCLED ON THE SCREEN?

18 A. YES.

19 Q. SO THIS IS PART OF, BY THE WAY, HRGETTAGGEDDATA;  
20 TRUE?

21 A. THAT'S CORRECT.

22 Q. AND THERE'S A COMMENT HERE INTRODUCING WHAT'S ABOUT  
23 TO HAPPEN, IT SAYS, "MAKE SURE WE HAVE ACCESS TO  
24 WORD/EXCEL OM," DO YOU SEE THAT?

25 A. YES.

1 Q. DO YOU UNDERSTAND "OM" TO REFER TO OBJECT MODEL?

2 A. CORRECT.

3 Q. AND THEN THERE IS AN "IF" STATEMENT, TWO LINES

4 BELOW, DO YOU SEE THAT?

5 A. YES.

6 Q. DO YOU UNDERSTAND THIS "IF" STATEMENT IN THE CODE

7 THAT FOLLOWS TO APPLY IF THE USER IS IN MICROSOFT WORD

8 AS THEIR APPLICATION?

9 A. CORRECT.

10 Q. I'D LIKE TO YOU ACTUALLY LOOK AT THE CODE FROM

11 THERE DOWN TO THE "ELSE" STATEMENT AT THE TOP OF PAGE

12 5. SO LET'S GO TO THE TOP OF PAGE 5 AND LOOK AT THE

13 "ELSE" STATEMENT. SO ON THE TOP OF PAGE 5, DO YOU SEE

14 WHAT I'VE CIRCLED THERE?

15 A. YES.

16 Q. AND SO THIS IS WHAT HAPPENS IF THE "IF" ISN'T TRUE,

17 CORRECT, "ELSE," YOU DO SOMETHING ELSE, IS THAT

18 CORRECT?

19 A. I'LL JUST CHECK. YES.

20 Q. SO THE PORTION OF THE CODE THAT FOLLOWS THE "IF" IS

21 USED IF THE PERSON IS WORKING IN MICROSOFT WORD;

22 CORRECT?

23 A. GENERALLY THAT'S RIGHT.

24 Q. AND IF YOU'RE NOT, IF IT'S "ELSE," THAN YOU NEED TO

25 PARSE THE XML STRING; RIGHT?

1 A. I THINK THAT'S GENERALLY CORRECT.

2 Q. SO THE CODE THAT YOU POINTED TO IN YOUR CLAIM CHART  
3 -- COULD WE HAVE THE ELMO, PLEASE -- AS HAVING  
4 SOMETHING TO DO WITH ANALYZING THE XML STRING, DOESN'T  
5 ACTUALLY OPERATE AT ALL IF THE USER IS USING MICROSOFT  
6 WORD; RIGHT?

7 THE COURT: DID YOU SAY "IS" OR "ISN'T" USING  
8 MICROSOFT WORD?

9 Q. IT DOESN'T OPERATE AT ALL IF A USER IS USING  
10 MICROSOFT WORD; CORRECT?

11 A. IT'S NOT CORRECT. THE HRGETTAGGEDDATA ANALYZES THE  
12 DATA PASSED TO THE SMART TAGS ACTION. THAT'S WHAT I'VE  
13 SAID, THAT'S WHAT IT DOES. SO IT'S PASSED TO THE SMART  
14 TAGS ACTION.

15 NOW, THERE ARE TWO PARTS OF THIS CODE, ONE IS IF  
16 WORD IS CURRENTLY AN ACTIVE APPLICATION, AND THE OTHER  
17 IS IF WORD IS NOT CURRENTLY THE ACTIVE APPLICATION.  
18 EITHER WAY, THE LAST SENTENCE AS YOU SEE HERE, IS  
19 ABSOLUTELY RIGHT.

20 Q. SO YOU DISAGREE THAT THE CODE ITSELF SHOWS THAT  
21 THERE'S NO XML STRING PARSING OR ANALYSIS WHERE THE  
22 USER IS ACTUALLY WORKING IN MICROSOFT WORD?

23 A. WHEN THE USER IS WORKING IN MICROSOFT WORD, THE  
24 CODE OF THE FIRST "IF" ON THE PAGE 2 THROUGH PAGE 5 IS  
25 EXECUTED, AND THAT CODE ALSO DOES ANALYSIS.

1 Q. WELL, THE CODE THAT YOU POINTED TO IN YOUR CLAIM  
2 CHART IS NOT, IS NOT THE CODE ON PAGES 2 THROUGH 5 OF  
3 TAB E OF EXHIBIT 372, IS IT?

4 A. I DISAGREE.

5 Q. LET ME STATE IT ANOTHER WAY. TELL US OR DESCRIBE  
6 FOR US IN THAT CODE ON PAGES 2 THROUGH 5 OF TAB E TO  
7 EXHIBIT 372 WHERE THERE IS ANY ANALYSIS AT ALL OF THE  
8 XML STRING.

9 A. IF WE LOOK AT LINE 94 OF THIS CODE, THIS IS ON PAGE  
10 3, THERE'S A CALL TO FSCANGETDATA. SO THIS ROUTINE  
11 INVOKES ANOTHER ROUTINE. NOW, IT'S VERY COMMON IN  
12 PROGRAMMING LANGUAGES, AS I'VE TOLD THE JURY EARLIER IN  
13 MY TESTIMONY, THAT YOU DON'T WRITE ALL OF YOUR SOURCE  
14 CODE IN ONE BIG BLOB, LIKE ONE BIG LETTER THAT GOES ON  
15 FOR HUNDREDS OF PAGES. IT'S DIVIDED INTO WHAT ARE  
16 CALLED SUBROUTINES, SECTIONS.

17 AND IN THIS PARTICULAR CASE, THE WRITERS OF THIS  
18 CODE HAVE DIVIDED IT INTO SECTIONS. THIS SECTION IS  
19 CALLED HRGETTAGGEDDATA. THERE'S ANOTHER SECTION IN  
20 ANOTHER PLACE IN THE SOURCE CODE CALLED FSCANGETDATA.  
21 AND FSCANGETDATA ANALYZES THE SOURCE CODE -- I'M SORRY,  
22 ANALYZES THE SMART TAG AS A RESULT OF THE ACTION BEING  
23 CHOSEN BY THE USER FROM THE MENU.

24 Q. FSCANGETDATA DOESN'T ANALYZE THE XML STRING, DOES  
25 IT?

1     A.  NO, IT GOES INTO A -- IT USES A POINTER TO THE  
2     BOOKMARK FUNCTION, THAT IN TURN POINTS TO THE SMART TAG  
3     BOOKMARK, THAT IN TURN POINTS TO THE PROPERTY BAG, THAT  
4     IN TURN POINTS TO THE PORTIONS OF THE PROPERTY BAG THAT  
5     HAVE THE SAVE SMART TAG INFORMATION.

6     Q.  NOW, DURING YOUR DIRECT EXAMINATION YOU WERE ASKED  
7     BY YOUR LAWYER TO CIRCLE VARIOUS PLACES IN THE SOURCE  
8     CODE THAT IN YOUR OPINION SUPPORTED YOUR ANALYSIS.  DO  
9     YOU RECALL THAT?

10    A.  YES.

11    Q.  I BELIEVE IN DOING THAT YOU HAD THE ASSISTANCE OF  
12    SOME OF ARENDI'S ATTORNEYS IN CIRCLING THE CORRECT  
13    PORTIONS; ISN'T THAT RIGHT?

14    A.  NO.

15    Q.  YOU WEREN'T CONFERRING WITH MR. CROSBY TO HELP YOU  
16    CIRCLE THE RIGHT PARTS OF THE CODE?

17    A.  I ASKED MR. CROSBY FOR ALL OF CODE THAT I HAD  
18    REFERENCED AND HE POINTED TO THE EXHIBITS.  HE PROVIDED  
19    ME A PEN AND I DID ALL OF THE CIRCLING AND I DID ALL  
20    THE LABELING.

21    Q.  YOU NEVER SHOWED THE JURY ANY OF THOSE CIRCLED  
22    PORTIONS OF THE CODE, DID YOU?

23    A.  THAT'S CORRECT.

24    Q.  NOW, LET'S'S GO FROM THE CODE TO SOME HIGHER LEVEL  
25    OF QUESTIONS.  YOU WOULD AGREE THAT A PERSON CAN USE

1 ALL OF THE APPLICATIONS IN MICROSOFT'S OFFICE SOFTWARE  
2 WITHOUT EVER USING A SMART TAG; TRUE?

3 A. YES.

4 Q. IN FACT, AS WE ALREADY SAW, A NUMBER OF THE SMART  
5 TAGS ARE TURNED OFF BY DEFAULT WHEN SOMEBODY INSTALLS  
6 OFFICE XP; TRUE?

7 A. WELL, I THINK WHAT WE SAW IS NOT THE ACTUAL  
8 SITUATION. WHAT'S TRUE IS THAT SOME OF THE SMART TAGS  
9 ARE TURNED ON, IN FACT, PERSON NAME IS NOT ONE OF THEM,  
10 BUT OTHERS OF THE SMART TAGS ARE TURNED ON BY DEFAULT.

11 Q. SO WHEN A PERSON INSTALLS OFFICE XP, SOME SMART  
12 TAGS ARE ON BY DEFAULT AND SOME ARE OFF BY DEFAULT;  
13 TRUE?

14 A. YES.

15 Q. AND THE PERSON NAME SMART TAG IN PARTICULAR IS ONE  
16 THAT IS OFF BY DEFAULT; TRUE?

17 A. THAT'S CORRECT.

18 Q. AND THERE'S NO DISPUTE THAT MICROSOFT OFFICE XP CAN  
19 BE USED WITH ALL OF THE SMART TAGS TURNED OFF; RIGHT?

20 A. THAT'S RIGHT.

21 Q. AND IF WE ASK TO TALK ABOUT THE INDIVIDUAL  
22 APPLICATIONS, MICROSOFT WORD CAN BE USED WITHOUT SMART  
23 TAGS; TRUE?

24 A. SMART TAGS ARE IN THE APPLICATION, BUT THE USER  
25 DOESN'T HAVE TO ACTUALLY CHOOSE A MENU. SO IN THAT

1 RESPECT, IT'S TRUE.

2 Q. WELL, IN FACT, YOU HAVE USED MICROSOFT WORD WITHOUT

3 SMART TAGS, HAVEN'T YOU?

4 A. I HAVE.

5 Q. MICROSOFT EXCEL CAN BE USED WITHOUT SMART TAGS;

6 RIGHT?

7 A. CORRECT.

8 Q. MICROSOFT OUTLOOK CAN BE USED WITHOUT SMART TAGS?

9 A. YOU'RE CORRECT.

10 Q. MICROSOFT ACCESS CAN BE USED WITHOUT SMART TAGS?

11 A. THAT'S CORRECT. ONCE AGAIN, WHEN YOU SAY USED

12 WITHOUT SMART TAGS, YOU DON'T MEAN SMART TAGS SEPARATED

13 OUT FROM THE MICROSOFT PRODUCT, IT'S JUST THE USER

14 DOESN'T CHOOSE A MENU. THAT'S MY UNDERSTANDING OF THE

15 MENU.

16 Q. A USER CAN USE ANY OF THESE MICROSOFT APPLICATIONS

17 WITHOUT EVER USING SMART TAGS; TRUE?

18 A. I'M SORRY. CAN YOU REPEAT THE QUESTION?

19 Q. I'M SORRY. A USER CAN USE ANY OF THESE MICROSOFT

20 SOFTWARE APPLICATIONS WITHOUT USING THE SMART TAGS

21 FEATURE; TRUE?

22 A. YES, THAT'S CORRECT.

23 Q. AND JUST SO WE FINISH THE LIST HERE, MICROSOFT

24 POWERPOINT CAN BE USED BY A USER WITHOUT EVER USING

25 SMART TAGS; TRUE?

1 A. THAT'S RIGHT.

2 Q. NOW, YOU HAVE TESTIFIED AS AN EXPERT IN MANY CASES;  
3 TRUE?

4 A. I HAVE.

5 Q. IN THE LAST SIX YEARS YOU'VE BEEN RETAINED AS A  
6 CONSULTANT IN MORE THAN 75 CASES; RIGHT?

7 A. THAT'S RIGHT.

8 Q. AND IF WE ADD UP ALL THE CASES SINCE YOU'VE STARTED  
9 WORKING AS A CONSULTANT IN LITIGATION, IT'S OVER 100,  
10 ISN'T IT?

11 A. I THINK IT IS.

12 Q. NOW, OF THOSE 76 OR SO OR 75 PLUS IN THE LAST SIX  
13 YEARS, 20 OF THOSE HAVE INVOLVED PATENTS; RIGHT?

14 A. I GUESS. I'D IMAGINE. I HAVEN'T COUNTED,  
15 ACTUALLY --

16 Q. APPROXIMATELY?

17 A. YOU HAVE MY RESUME.

18 Q. DOES THAT SOUND RIGHT, APPROXIMATELY 20?

19 A. YES.

20 Q. AND DO YOU RECALL, I THINK WE WENT THROUGH THIS IN  
21 DEPOSITION, BUT 18 OF THOSE 20 TIMES YOU TESTIFIED OR  
22 CONSULTED FOR THE PLAINTIFF IN THE PATENT CASE; IS THAT  
23 RIGHT?

24 A. YES, I THINK THAT'S RIGHT.

25 Q. AND THIS CASE ISN'T YOUR ONLY CASE AGAINST



1 MICROSOFT; TRUE?

2 A. THAT'S CORRECT.

3 Q. NOW, YOU SHOWED THE JURY A CV, RESUME, AS PART OF

4 YOUR QUALIFICATIONS ON DIRECT, CORRECT, DIRECT

5 EXAMINATION?

6 A. I DON'T THINK I DID. I THINK ATTORNEYS FOR ARENDI

7 DID.

8 Q. BUT ONE OF YOUR RESUMES IS IN EVIDENCE, THE JURY

9 CAN LOOK AT IT; RIGHT?

10 A. YES.

11 Q. YOU ACTUALLY HAVE ANOTHER RESUME AS WELL, DON'T

12 YOU?

13 A. YES.

14 Q. AND THAT'S AN ACTING RESUME; RIGHT?

15 A. THAT'S RIGHT.

16 Q. JUST SHOWING A COVER OF IT AT THE MOMENT --

17 MR. FEHER: OBJECTION.

18 THE COURT: JUST TO THE WITNESS YOU ARE SHOWING

19 IT?

20 MR. SCHERKENBACH: JUST TO THE WITNESS.

21 Q. CAN YOU IDENTIFY THIS DOCUMENT FOR ME? AND FOR THE

22 RECORD IT'S MARKED E-21.

23 A. YES, THIS DOCUMENT REFLECTS MY HOBBY, IT'S A RESUME

24 FOR ACTING.

25 Q. AND ON YOUR -- I APOLOGIZE FOR THE QUALITY OF THE

1       PICTURE.  ON YOUR ACTING RESUME YOU LIST A NUMBER OF  
2       CREDITS; TRUE?

3       A.  YES.

4       Q.  AND SOME TRAINING YOU'VE HAD RELATING TO ACTING;  
5       TRUE?

6       A.  CORRECT.

7       Q.  GO TO THE NEXT PAGE.  AND THEN AT THE END, YOU HAVE  
8       A PARAGRAPH THAT'S TITLED, "SKILLS"; RIGHT?

9       A.  RIGHT.

10      Q.  AND ONE OF THE SKILLS THAT YOU LIST ON YOUR ACTING  
11      RESUME IS "EXPERT WITNESS," IS THAT TRUE?

12      A.  CORRECT, THIS WAS COPIED FROM MY REGULAR RESUME.

13      Q.  AND ANOTHER OF YOUR SKILLS LISTED ON YOUR ACTING  
14      RESUME IS "KNOWLEDGE OF TRIAL PROCEDURES AND LAW," IS  
15      THAT TRUE?

16      A.  YES.

17               MR. SCHERKENBACH:  YOUR HONOR, I HAVE NO FURTHER  
18      QUESTIONS OF MR. KLAUSNER AT THIS TIME.

19                       REDIRECT EXAMINATION

20      BY MR. FEHER:

21      Q.  MR. KLAUSNER, MR. SCHERKENBACH JUST ASKED YOU ABOUT  
22      YOUR ACTING RESUME.  WOULD YOU TELL US WHAT THAT'S ALL  
23      ABOUT?

24      A.  SEVERAL YEARS AGO WHEN I -- I VOLUNTEERED IN A  
25      NURSING HOME FOR ABOUT THREE YEARS.  USED TO GO UP ON

1 WEEKENDS, AND I LEARNED THAT I LIKED TO TALK TO THE  
2 FOLKS TO TELL THEM OR READ THEM FROM THE NEWSPAPER, AND  
3 ALSO MIMIC THE VOICES OF THE NEWSPAPER ARTICLES WHEN  
4 PEOPLE SAID, HE SAID, SHE SAID. AND I ENJOYED THAT.

5 AND SUBSEQUENTLY MY WIFE STARTED SCHOOL AND SHE  
6 WAS INVOLVED IN DRAMA, AND SHE ENCOURAGED ME TO ALSO  
7 TRY TO SEE IF I LIKED IT. AND I GOT TOGETHER WITH SOME  
8 OF MY FRIENDS AND ABOUT ONCE OR TWICE A YEAR WE PUT ON  
9 PLAYS, BOTH IN THE COMMUNITY AND FOR -- ACTUALLY,  
10 MOSTLY FOR THE RELATIVES OF PEOPLE WHO ARE IN THE PLAY  
11 BECAUSE THAT MOSTLY WHO COMES. SO I STARTED TO DO THAT  
12 AND THAT'S WHAT I LIKE TO DO, IS TO DO THAT. AND IT  
13 TAKES ME AWAY FROM THE STRESS OF WORKING IN THE  
14 COMPUTER FIELD, THAT INCLUDES ALL OF THE WORK THAT I  
15 DO, INCLUDING THIS WORK. SO IT IS A TOTAL DIVERSION,  
16 AND I VOLUNTEER MY TIME.

17 Q. OKAY. MR. KLAUSNER, DO YOU REMEMBER ON THURSDAY  
18 WHEN MR. SCHERKENBACH ASKED YOU ABOUT WHETHER ONLY THE  
19 PERSON NAME AND DATE SMART TAGS WAS SPECIFICALLY  
20 MENTIONED IN YOUR EXPERT REPORT?

21 A. YES.

22 Q. NOW, WERE THE PERSON NAME AND DATE SMART TAGS IN  
23 YOUR EXPERT REPORT PROVIDED AS EXAMPLES OF THE SMART  
24 TAG TECHNOLOGY IN YOUR REPORT?

25 A. YES.

1 Q. WOULD YOU EXPLAIN.

2 A. THE SMART TAGS TECHNOLOGY, AS I'VE SAID, ACTUALLY,  
3 MANY TIMES, IS INTERWOVEN THROUGH ALL OF THE PRODUCTS.  
4 SO THERE ARE MANY DIFFERENT TYPES. AND THE TYPES THAT  
5 I CHOSE AS EXAMPLES ARE PERSON NAME AND DATE TO PUT IN  
6 MY REPORT, BUT, IN FACT, IT ALSO INCLUDES THE  
7 ADDRESSES, IT INCLUDES ALL OF THE SMART TAG  
8 CAPABILITIES.

9 Q. DOES IT INCLUDE THE TIME, PLACE, PHONE NUMBER,  
10 RECENT E-MAIL REQUIREMENTS AND FINANCIAL SYMBOL SMART  
11 TAGS?

12 A. ALL OF THOSE WITH THE CORRECTION THAT IT INCLUDES  
13 RECENT E-MAIL RECIPIENTS.

14 Q. DO YOU ALSO REMEMBER ON THURSDAY WHEN  
15 MR. SCHERKENBACH ASKED YOU ABOUT WHETHER THE  
16 THIRD-PARTY OR CUSTOM SMART TAGS WAS SPECIFICALLY  
17 MENTIONED IN YOUR REPORT?

18 A. YES, I REMEMBER.

19 Q. AND IN YOUR EXPERT REPORT, DID YOU LIST THE  
20 MATERIALS -- DID YOU LIST IN THE MATERIALS THAT YOU  
21 CONSIDERED -- STRIKE THAT. IN YOUR EXPERT REPORT IN  
22 THE LIST OF THE MATERIALS THAT YOU SPECIFICALLY  
23 CONSIDERED, DID YOU SPECIFICALLY MENTION CUSTOM SMART  
24 TAGS THAT YOU STUDIED?

25 A. YES.

1 Q. AND WAS IT YOUR OPINION AT THE TIME THAT YOU  
2 SUBMITTED YOUR EXPERT REPORT, THAT THE CUSTOM -- OR  
3 THIRD-PARTY SMART TAGS INFRINGED THE '853 PATENT?

4 A. IT WAS.

5 Q. AND DO YOU RECALL TELLING THAT TO MICROSOFT'S  
6 COUNSEL AT YOUR DEPOSITION?

7 A. I DO.

8 Q. NOW, DO YOU RECALL, MR. KLAUSNER, ON THURSDAY, WHEN  
9 MR. SCHERKENBACH ASKED YOU WHETHER THE WORD "METADATA"  
10 IS ANYWHERE IN THE '853 PATENT, AND YOU SAID THAT THE  
11 WORD ITSELF DOES NOT APPEAR, DO YOU RECALL THAT?

12 A. I DO RECALL THAT.

13 Q. LET ME ASK YOU THIS. ARE FORMATTING CODES AN  
14 EXAMPLE OF METADATA?

15 A. YES.

16 Q. IS THERE ANY REFERENCE ANYWHERE IN THE '853 PATENT  
17 THAT ONE SKILLED IN THE ART AT THE TIME OF THE  
18 INVENTION OF THE '853 PATENT, WOULD UNDERSTAND REFERS  
19 TO METADATA, AND THAT THE ANALYSIS OF ELEMENT D OF  
20 CLAIMS 1 AND 16 AFTER THE SINGLE ENTRY OF THE EXECUTE  
21 COMMAND, INCLUDES METADATA?

22 A. YES.

23 MR. SCHERKENBACH: OBJECTION, YOUR HONOR.

24 THE COURT: SUSTAINED.

25 Q. IS THERE ANY REFERENCE ANYWHERE IN THE '853 PATENT

1        THAT ONE OF ORDINARY SKILL IN THE ART WOULD UNDERSTAND  
2        REFERS TO METADATA?

3        A.    THERE IS.

4        Q.    WOULD YOU PLEASE EXPLAIN.

5        A.    THERE'S REFERENCE, FOR EXAMPLE, TO FORMATTING.  IF  
6        WE LOOK AT -- LET'S SEE, LOOK AT COLUMN 4, PARTICULARLY  
7        LINE 31 AND 32 -- ACTUALLY, WE CAN START WITH LINE 29.  
8        IT SAYS, "THE PROGRAM ANALYZES" --

9        Q.    MR. KLAUSNER, WHERE ARE YOU REFERRING?

10       A.    I'M REFERRING TO WHAT I'M ENCIRCLING ON THE SCREEN.

11           MR. FEHER:  YOUR HONOR, MAY WE PUBLISH THIS TO  
12       THE JURY?

13           THE COURT:  YES.

14       A.    SAYS, THE PROGRAM ANALYZES," THAT'S ON LINE 29,  
15       "WHAT THE USER HAS TYPED IN THE DOCUMENT, FOR EXAMPLE,  
16       BY ANALYZING," AND THE FIRST THING IT SAYS IS  
17       "PARAGRAPH/LINE SEPARATIONS AND FORMATTING."

18       Q.    NOW, MR. SCHERKENBACH SHOWED YOU A NUMBER OF  
19       EXHIBITS TODAY, SCREEN SHOTS, AND THEN SOME INFORMATION  
20       ON THE FOLLOWING PAGES.  AND I'M REFERRING TO EXHIBITS  
21       S-26, T-26, U-26, V-26, W-26 AND X-26.

22           NOW, MR. SCHERKENBACH REFERRED TO THE  
23       INFORMATION BEHIND THE SCREEN SHOTS ON THESE EXHIBITS  
24       AS SOURCE.  IS THAT SOURCE CODE THAT HE REFERRED TO  
25       THAT'S ATTACHED BEHIND EACH OF THE FIRST PAGES OF THOSE

1 EXHIBITS?

2 A. NO. IT'S THE XML OR EXTENSIBLE MARKUP LANGUAGE  
3 REPRESENTATION OF WHAT THE TEXT IN THE DOCUMENT  
4 ACTUALLY IS.

5 Q. IS THAT INFORMATION THAT IS CONTAINED IN THE  
6 DOCUMENT?

7 A. IT'S POSSIBLE TO SAVE THE SMART TAG WITH THE  
8 DOCUMENT, BUT IT'S NOT INFORMATION -- I DON'T BELIEVE  
9 IT'S -- THE INFORMATION CERTAINLY IS CONTAINED IN THE  
10 DOCUMENT, BUT IN TERMS OF WHETHER IT IS ACTUALLY SAVED  
11 WITH THE DOCUMENT, I DON'T KNOW. WELL, LET'S PUT IT  
12 THIS WAY -- THAT'S CONFUSING -- WHAT HAPPENS IS THAT  
13 THE NAMES, THE TITLES, ALL OF THAT INFORMATION IS  
14 PHYSICALLY SAVED WITH THE DOCUMENT. BUT THE  
15 REPRESENTATION THAT WE'RE LOOKING AT HERE ON THE SCREEN  
16 IS NOT PHYSICALLY IN THE DOCUMENT.

17 MR. FEHER: NOW, IF WE CAN PUT UP THE BOARDS FOR  
18 CLAIM 16.

19 THE COURT: COUNSEL, THE PROHIBITION AGAINST  
20 COMMENTS ALSO APPLIES TO DISCUSSIONS BETWEEN COUNSEL  
21 THAT ARE AUDIBLE TO THE JURORS.

22 MR. FEHER: I APOLOGIZE, YOUR HONOR. I'M SORRY.

23 Q. WHILE HE'S SETTING THAT UP, MR. SCHERKENBACH, DO  
24 YOU RECALL LAST THURSDAY BEING ASKED TO LOOK AT THE  
25 SOURCE CODE FILES OF MICROSOFT AND POINTING OUT IN RED

1 THE ANALYSIS STEPS THAT TAKE PLACE; IS THAT RIGHT?

2 A. GENERALLY, I WAS ASKED TO ENCIRCLE ALL OF THE CODE  
3 THAT'S INVOLVED IN THE ANALYSIS.

4 Q. DID THE SCREEN SHOTS AND THE INFORMATION ATTACHED  
5 TO THOSE SCREEN SHOTS THAT MR. SCHERKENBACH SHOWED YOU  
6 THIS MORNING, CONTAIN THE SOURCE CODE THAT PERFORMS THE  
7 ANALYSIS STEPS THAT CORRESPONDS TO THE ANALYSIS STEP OF  
8 THE CLAIMS OF THE '853 PATENT?

9 A. THE SOURCE CODE THAT I WAS SHOWN BY  
10 MR. SCHERKENBACH INCLUDES -- IS PART OF ALL OF THE  
11 SOURCE CODE THAT I HAVE SEEN, THAT PERFORM THE ANALYSIS  
12 STEPS.

13 MR. FEHER: I'M TOLD THAT WE CAN'T PUT THE  
14 EASELS UP, SO I THINK WE'LL GO WITH THE ELMO, HERE.

15 Q. NOW, MR. KLAUSNER, LET'S TURN TO CLAIM 16, AS AN  
16 EXAMPLE, AND ELEMENT D, I HAVE THAT UP ON THE ELMO.  
17 OKAY.

18 A. I HAVE IT.

19 Q. NOW, WITH RESPECT TO THE ANALYSIS PERFORMED BY EACH  
20 OF THOSE SOURCE CODE PORTIONS THAT YOU WENT OVER FOR  
21 ELEMENT D THAT ARE ON THAT CHART -- AND YOUR HONOR, MAY  
22 I HAVE THIS PUBLISHED TO THE JURY IF IT ISN'T -- DOES  
23 THAT ANALYSIS OCCUR AFTER THE SELECTION OF THE MENU  
24 ITEM THAT IS THE SINGLE ENTRY OF THE EXECUTE COMMAND?

25 A. YES, IT OCCURS AFTER THE USER CHOOSES AN ITEM FROM



1 THE MENU.

2 Q. WOULD YOU EXPLAIN THAT FOR US.

3 A. WHEN THE USER CHOOSES AN ITEM FROM THE MENU, THE --  
4 JUST AS WITH ALL OF THE SOURCE CODE IN GENERAL,  
5 PARTICULAR PIECES OF SOURCE CODE DO GET EXECUTED IN  
6 ORDER TO HANDLE WHAT THE USER HAS DONE. AND AS I'VE  
7 INDICATED HERE, THE ANALYSIS THAT'S DONE AS AN EXAMPLE,  
8 IS DONE IN THESE PIECES OF SOURCE CODE.

9 THIS PARTICULAR PIECE OF SOURCE CODE, THE FIRST  
10 ONE, THE INVOKEACTIONFACTOID, CALLS YET ANOTHER  
11 SUBROUTINE, ANOTHER PIECE OF SOURCE CODE, TO LOOK FOR  
12 AND GET THE SMART TAGS FROM THE DOCUMENT. AND THAT'S  
13 NOT A SIMPLE LOCATE, IT IS NOT A SIMPLE POINTER. IT  
14 REQUIRES A SERIES OF STEPS, A SERIES OF DIRECTIONS, A  
15 SERIES OF -- AN ALGORITHM TO BE ACTUALLY PERFORMED IN  
16 ORDER TO GET THE ACTUAL PROPERTY BAG THAT HAS THE  
17 INFORMATION THAT'S ULTIMATELY GOING TO GIVE THE PROGRAM  
18 THE SMART TAG ITSELF.

19 THE SECOND ROUTINE, PFIFROMSTTB, PICKS UP THOSE  
20 PROPERTIES. THE THIRD CALLS GETBMKFROMIBKF, ULTIMATELY  
21 CALLS THAT. AND THAT ALSO DOES ANALYSIS TO GET THE  
22 SMART TAG INFORMATION OUT OF THE DOCUMENT. THIS  
23 LOOKING-FOR-AND-GETTING RIGHT HERE, IS A STEP THAT  
24 INVOLVES A SERIES OF POINTERS, IT IS AN ALGORITHM, AND  
25 IT SAYS GO HERE, AND IF YOU FIND THIS, GO THERE, AND IF

1       YOU FIND THIS, GO THERE, AND THEN YOU GET IT.

2               AND THE LAST ONE IS A ROUTINE, IS A SUBROUTINE

3       IN THE SOURCE CODE THAT SAYS NEVER MIND FOR A MOMENT

4       THE HIDDEN PARTS OF THE SMART TAG THAT ARE SORT OF

5       BEHIND THE SCENES, BUT GET ME LITERALLY WHAT APPEARS TO

6       THE USER, LITERALLY WHAT THE USER SEES. AND THAT ALSO

7       DOES ANALYSIS TO LITERALLY GET THAT VISIBLE REGION.

8       THAT'S WHY IT'S CALLED FETCHVISIBLEREGION OF

9       CHARACTERS.

10      Q. AND MR. SCHERKENBACH ASKED YOU ABOUT THE

11      FETCHFACTOIDTEXTXST AND THE GETBMKFROMIBKF CODE, AND HE

12      SHOWED YOU PORTIONS OF THOSE CODE. CAN YOU TELL US HOW

13      THE FETCHFACTOIDTEXTXST ROUTINE CALLS THE

14      GETBMKFROMIBKF ROUTINE? THAT'S A MOUTHFUL.

15      A. THE WAY THAT THESE ROUTINES WORK IS IT'S SORT OF

16      LIKE A CHAIN. THE FIRST -- IF THERE IS A GROUP OF

17      PEOPLE, THE FIRST PERSON SAYS TO THE SECOND, CAN YOU DO

18      THIS. AND THE SECOND UNDERSTANDS THAT AND SAYS, WELL,

19      IN ORDER TO DO THIS, I HAVE TO CALL THAT PERSON. AND

20      THEN THE THIRD ONE SAYS, WELL, IN ORDER TO DO WHAT HE

21      ASKED ME TO DO, I HAVE TO CALL HER. AND THEN THE THIRD

22      -- SO IT SORT OF FOLLOWS A CHAIN.

23               SO ULTIMATELY THE FETCHFACTOIDTEXTXSTZ ROUTINE

24      ULTIMATELY CALLS THE GETBMKFROMIBKF.

25               MR. FEHER: THANK YOU.

1 THE COURT: WE'LL HAVE TO BREAK THERE FOR LUNCH,  
2 MR. FEHER.

3 MEMBERS OF THE JURY, YOU MAY WANT TO HAVE SOME  
4 ALPHABET SOUP FOR LUNCH. WE'LL RESUME AT 2:00 O'CLOCK.

5 (JURY EXCUSED)

6 THE COURT: YOU MAY STEP DOWN, MR. KLAUSNER.

7 (WITNESS EXCUSED)

8 THE COURT: COURT WILL BE IN RECESS.

9 (LUNCH 12:30 TO 2:05 P.M.)

10 THE COURT: BRING THE JURY IN, PLEASE.

11 (JURY PRESENT)

12 THE COURT: PLEASE BE SEATED, LADIES AND  
13 GENTLEMEN.

14 MR. FEHER: MAY I, YOUR HONOR. THANK YOU.

15 BY MR. FEHER:

16 Q. MR. KLAUSNER, WHEN WE BROKE FOR LUNCH -- CAN WE  
17 HAVE THIS PUBLISHED, PLEASE. THANK YOU.

18 WHEN WE BROKE FOR LUNCH, YOU HAD EXPLAINED FOR  
19 US HOW THE COMPUTER CODE THERE PERFORMS THE ANALYZING  
20 STEP OF ELEMENT D, AND I'D LIKE TO CONTINUE WHERE WE  
21 LEFT OFF.

22 NOW, MR. KLAUSNER, DOES THE COMPUTER CODE THAT  
23 YOU'VE IDENTIFIED HERE ON THAT CHART FOR CLAIM 16 WITH  
24 RESPECT TO ELEMENT D, DOES THAT ANALYZE THE DOCUMENT TO  
25 DETERMINE IF THE FIRST INFORMATION IS CONTAINED

1       THEREIN?

2       A.   YES, IT DOES.

3       Q.   WOULD YOU PLEASE EXPLAIN.

4       A.   THE COMPUTER CODE LOOKS INTO BOTH THE VISIBLE AND  
5       THE INVISIBLE PARTS OF THE DOCUMENT.  THE INVISIBLE  
6       PART, FOR EXAMPLE CONTAINING THIS PROPERTY BAG THAT HAS  
7       THE INFORMATION ABOUT THE SMART TAG, BOTH WHAT IT WAS  
8       THAT WAS RECOGNIZED, HOW LONG IT IS, WHERE IT STARTS IN  
9       THE DOCUMENT, WHAT KIND OF A SMART TAG IT IS, AND IT  
10      DOES SO BY A SERIES OF INDIRECTIONS.  IN OTHER WORDS,  
11      GO HERE AND THERE IT WILL FIND INFORMATION THAT DIRECTS  
12      IT TO ANOTHER PLACE AND THEN ON TO ANOTHER PLACE, FOR  
13      EXAMPLE, BOOKMARKS AND THEN SMART TAG BOOKMARKS AND  
14      THEN PROPERTY BAGS.  SO IT LOOKS INSIDE, LITERALLY  
15      INSIDE THE DOCUMENT TO FIND OUT, AND TO DETERMINE WHAT  
16      EXACTLY IS THE FIRST INFORMATION.

17      Q.   AND DOES THE COMPUTER CODE THAT YOU HAVE IDENTIFIED  
18      HERE ON THAT CHART FOR ELEMENT D OF THE CLAIM 16 UNDER  
19      SOURCE CODE, DOES THAT ANALYZE THE DOCUMENT TO  
20      DETERMINE IF THE FIRST INFORMATION IS CONTAINED  
21      THEREIN?

22      A.   YES.

23      Q.   WOULD YOU PLEASE EXPLAIN.

24      A.   THE FIRST THING IT DOES IS IT LOOKS TO SEE IF THERE  
25      IS, IN FACT, A BOOKMARK IN THIS DOCUMENT AND, IN FACT,

1       IS THERE, IF THERE IS A BOOKMARK, IS IT A SMART TAG  
2       BOOKMARK. SO IT DOES LOOK FOR, IN OTHER WORDS, IF THAT  
3       FIRST INFORMATION, IF THE SMART TAG IS ACTUALLY IN THE  
4       DOCUMENT.

5       Q. NOW, DO YOU RECALL EARLIER TODAY -- WOULD YOU CLEAR  
6       THE SCREEN, PLEASE.

7               DO YOU RECALL EARLIER TODAY, WHEN  
8       MR. SCHERKENBACH TOOK YOU THROUGH THESE EXAMPLES IN  
9       THAT CHART OF ELEMENT D OF CLAIM 16?

10      A. YES.

11      Q. AND LET'S GO THROUGH THOSE ONE AT A TIME. AND I'M  
12      GOING TO ASK YOU THE QUESTIONS -- THE QUESTION THAT  
13      WASN'T ASKED --

14              MR. SCHERKENBACH: YOUR HONOR, I OBJECT TO THE  
15      WINDUP HERE.

16              THE COURT: LET'S GET TO THE PITCH, MR. FEHER.

17              MR. FEHER: I APOLOGIZE, YOUR HONOR.

18      Q. FOR THE PERSON NAME SMART TAG, YOU SEE WHERE I'M  
19      REFERRING TO HERE?

20      A. I SEE.

21      Q. NOW, DOES THE ANALYSIS THAT YOU REFER TO WITH  
22      RESPECT TO THE CODE THAT OCCURS AFTER THE SELECTION OF  
23      THE MENU ITEM, DOES THAT LOOK FOR THE PERSON'S NAME?

24      A. YES.

25      Q. WOULD YOU PLEASE EXPLAIN.

1     A.   THE PERSON NAME IS STORED WITHIN THIS PROPERTY BAG  
2     THAT I EXPLAINED EARLIER, AND THE CODE THAT'S UP ABOVE  
3     LOOKS FOR, IN OTHER WORDS, DETERMINES BY THE USE OF ITS  
4     ALGORITHM WHERE EXACTLY THAT NAME IS WITHIN THE  
5     PROPERTY BAG.  IT'S A SERIES OF INDIRECTIONS, YOU HAVE  
6     TO UNFOLD SOMETHING AND UNFOLD SOMETHING AND UNFOLD  
7     SOMETHING ELSE IN ORDER TO FIND IT.

8     Q.   OKAY, LET'S TURN TO THE NEXT ONE, THE ADDRESS SMART  
9     TAG EXAMPLE THERE.  DOES THE ANALYSIS THAT YOU  
10    IDENTIFIED WITH RESPECT TO THE CODE ABOVE ON THE CHART,  
11    THAT OCCURS AFTER THE SELECTION OF THE MENU ITEM, DOES  
12    THAT LOOK FOR THE ADDRESS IN THAT EXAMPLE?

13    A.   YES, IT DOES.

14    Q.   WOULD YOU PLEASE EXPLAIN.

15    A.   IN EXACTLY THE SAME WAY THAT I DESCRIBED, IT'S  
16    LOOKING FOR THE PERSON NAME.  IT ALSO WOULD LOOK FOR  
17    THE SMART TAG THAT IS THE ADDRESS SMART TAG.

18    Q.   AND LET'S GO TO THE NEXT ONE, THE DATE ONE.  DOES  
19    THE ANALYSIS THAT YOU IDENTIFIED WITH RESPECT TO THE  
20    CODE FOR THIS ELEMENT D THAT OCCURS AFTER THE SELECTION  
21    OF THE MENU ITEM FOR THIS DATE SMART TAG, DOES THAT  
22    LOOK FOR THE DATE?

23    A.   YES.

24    Q.   WOULD YOU PLEASE EXPLAIN.

25    A.   ONCE AGAIN, IN EXACTLY THE SAME WAY THAT I

1 DESCRIBED IT FOR THE PERSON NAME AND THE ADDRESS, THE  
2 DATE IS ALSO LOOKED FOR WITHIN THE PROPERTY BAG.

3 Q. AND LET'S GO TO THE LAST ONE, THE CUSTOM SMART TAGS  
4 EXAMPLE THERE. DOES THE ANALYSIS THAT YOU IDENTIFIED  
5 WITH RESPECT TO THE CODE FOR ELEMENT D OF CLAIM 16,  
6 THAT OCCURS AFTER THE SELECTION OF THE MENU ITEM, DOES  
7 THAT ANALYSIS LOOK FOR THE CUSTOM INFORMATION, IN THIS  
8 CASE, THE PART NUMBER, FOR YOUR EXAMPLE?

9 A. YES.

10 Q. WOULD YOU PLEASE EXPLAIN.

11 A. IN THE SAME WAY AS I'VE TESTIFIED FOR THE PERSON,  
12 THE ADDRESS AND THE DATE, TYPE OF SMART TAGS, FOR A  
13 CUSTOM SMART TAG A PROPERTY BAG IS ALSO CREATED WITH  
14 THE SAME TYPE OF INFORMATION BEING STORED FOR IT. AND  
15 ONCE AGAIN, THE PROGRAM HAS TO FOLLOW THE ALGORITHM TO  
16 ACTUALLY FIND THE CUSTOM SMART TAG, THE PART NUMBER  
17 WITHIN THE PROPERTY BAG.

18 THE COURT: EXCUSE ME. IS THIS PROPERTY BAG  
19 PART OF THE DOCUMENT THAT'S BEING WORKED ON?

20 THE WITNESS: YES, YOUR HONOR. IT'S SAVED WITH  
21 THE DOCUMENT AS WELL.

22 Q. NOW, MR. KLAUSNER, WHEN MR. SCHERKENBACH QUESTIONED  
23 YOU THIS MORNING, YOU SAID THAT THE ANALYSIS OF ELEMENT  
24 D UNDER THE '853 PATENT IS NOT SIMPLY LOCATING  
25 INFORMATION. IN YOUR UNDERSTANDING, CAN THE ANALYSIS

1 OF ELEMENT D OF THE '853 PATENT INCLUDE LOCATING  
2 INFORMATION?

3 A. YES, OF COURSE.

4 Q. WOULD YOU PLEASE EXPLAIN.

5 A. SIMPLY SAYING THERE IT IS AND TAKING IT, COPYING  
6 IT, PASTING IT, AS I'VE TESTIFIED IN MY DEPOSITION, IS  
7 NOT LOCATING. BUT FOLLOWING AN ALGORITHM THAT IS  
8 DETAILED ABOUT GO HERE AND THERE YOU'LL FIND THIS, AND  
9 THEN YOU HAVE INSTRUCTIONS ON HOW TO DO THE NEXT THING,  
10 AND THEN YOU HAVE INDICATIONS ON HOW TO PROCEED AFTER  
11 THAT, THAT IS ANALYSIS, THAT IS AN ALGORITHM.

12 Q. AND IN YOUR UNDERSTANDING -- MR. SCHERKENBACH ALSO  
13 ASKED YOU WHETHER FETCHING AND RETRIEVING WAS ANALYSIS.  
14 AND MY QUESTION TO YOU IS IN YOUR UNDERSTANDING DOES  
15 THE ANALYSIS OF ELEMENT D OF THE '853 PATENT INCLUDE  
16 FETCHING AND RETRIEVING?

17 A. YES.

18 Q. WOULD YOU EXPLAIN.

19 A. WHERE THAT FETCHING AND RETRIEVING ISN'T SIMPLY  
20 SAYING OR LOOKING AT A PARTICULAR PLACE IN THE MEMORY  
21 OF A MACHINE AND SAY GO THERE AND GET IT, BUT IT AGAIN,  
22 INVOLVES, AS I SAID, WITH LOCATING INVOLVES FOLLOWING  
23 CERTAIN STEPS OR PROCEDURE, SOME ALGORITHM, THAT IS AN  
24 ANALYSIS. IT NEEDS TO LOOK AT THE INFORMATION AND  
25 DECIDE WHAT TO DO NEXT.



1 Q. NOW, MR. SCHERKENBACH ASKED YOU EARLIER TODAY ABOUT  
2 MR. HIGASHIYAMA'S DECLARATION, EXHIBIT 56, IN  
3 PARTICULAR, PARAGRAPH 24. LET ME SHOW THAT TO YOU.  
4 WOULD YOU CLEAR THE SCREEN, PLEASE.

5 YOUR HONOR, MAY I HAVE THIS PUBLISHED TO THE  
6 JURY?

7 ALTHOUGH THE WORD ANALYSIS DOES NOT APPEAR IN  
8 PARAGRAPH 24 OF THE DECLARATION, IS MR. HIGASHIYAMA  
9 REFERRING TO ANALYSIS UNDER ELEMENT D OF THE '853  
10 PATENT IN YOUR UNDERSTANDING?

11 MR. SCHERKENBACH: OBJECTION, LACKS FOUNDATION.

12 THE COURT: SUSTAINED.

13 Q. IN YOUR UNDERSTANDING, WHAT IS THE -- WHAT IS  
14 HAPPENING THERE WITH THE ACTION HANDLER TAKING THE  
15 ADDITIONAL STEP OF LOOKING AT THE SURROUNDING TEXT FOR  
16 FURTHER INFORMATION?

17 MR. SCHERKENBACH: SAME OBJECTION.

18 THE COURT: SUSTAINED.

19 Q. WHAT, IF ANYTHING, IS BEING REFERRED TO THERE IN  
20 THAT PARAGRAPH?

21 MR. SCHERKENBACH: SAME OBJECTION.

22 THE COURT: SUSTAINED.

23 Q. NOW, IN YOUR DIRECT TESTIMONY, MR. KLAUSNER, YOU  
24 WERE ASKED TO CIRCLE THE PORTIONS OF THE SOURCE CODE  
25 THAT DID THE ANALYSIS UNDER ELEMENT D OF THE '853

1       PATENT DURING THE BREAKS IN ORDER TO SAVE TIME. DO YOU  
2       RECALL THAT?

3       A. YES.

4       Q. AND MR. SCHERKENBACH IN YOUR CROSS-EXAMINATION,  
5       ASKED YOU WHETHER YOU HAD SHOWED IT TO THE JURY.

6               I WOULD LIKE -- MS. FERNANDES, MAY I SHOW  
7       MR. KLAUSNER EXHIBITS 241 THROUGH 244, AND THERE ARE A  
8       FEW OTHERS, TAKING THIS SLOWLY; ALSO EXHIBITS 252, 372  
9       AND 373.

10              (EXHIBITS PROVIDED TO WITNESS)

11             MR. FEHER: EXCUSE ME, YOUR HONOR, I MAY HAVE  
12       THE WRONG EXHIBIT NUMBERS, BECAUSE THEY DON'T APPEAR TO  
13       BE THE WRITTEN PORTIONS OF THE CODE. IF I COULD JUST  
14       HAVE A MOMENT.

15              (PAUSE)

16             MR. FEHER: 241 THROUGH 244, 252, 372 AND 373.

17              (EXHIBITS PROVIDED TO WITNESS)

18       Q. OKAY, MR. KLAUSNER, WOULD YOU SHOW THE JURY THE  
19       PORTIONS OF THE SOURCE CODE THAT YOU CIRCLED THAT DO AN  
20       ANALYZING STEP OF ELEMENT D OF CLAIM 16?

21             MR. SCHERKENBACH: YOUR HONOR, I OBJECT TO THAT.  
22       THESE MARKINGS HAVEN'T BEEN PROVIDED TO US.

23             THE COURT: STAND UP WHEN YOU OBJECT.

24             MR. SCHERKENBACH: I'M SORRY.

25             WE OBJECT TO THE JURY SEEING IT, AT LEAST AT

1       THIS TIME BECAUSE WE HAVEN'T SEEN THEM YET EITHER, SO  
2       WE DON'T KNOW WHAT'S ABOUT TO BE SHOWN HERE.

3               THE COURT:  PROBABLY THE EASIEST WAY,  
4       MR. SCHERKENBACH, IS THAT YOU COME UP HERE, YOU CAN  
5       LOOK AT THE EXHIBITS AND WHAT'S BEEN MARKED.

6               (MR. SCHERKENBACH REVIEWS EXHIBITS AT WITNESS  
7       STAND)

8               THE COURT:  DO YOU STILL OBJECT?

9               MR. SCHERKENBACH:  NO OBJECTION.

10       Q.  MR. KLAUSNER, WOULD YOU SHOW THOSE PORTIONS TO THE  
11       JURY.

12       A.  (WITNESS INDICATING PORTIONS TO THE JURY).

13               THE COURT:  WHAT IS THE PURPOSE OF THIS, MR.  
14       FEHER?

15               MR. FEHER:  YOUR HONOR, MICROSOFT SAID THAT WE  
16       DIDN'T SHOW THEM TO THE JURY.

17               THE COURT:  WELL, THE JURY WILL HAVE THEM WHEN  
18       THEY GO INTO THE JURY ROOM.  I DON'T THINK IT IS VERY  
19       HELPFUL FOR MR. KLAUSNER TO SHOW THEM TO THE --

20               MR. FEHER:  I AGREE WITH YOU, YOUR HONOR.  SO  
21       THAT'S FINE, MR. KLAUSNER.

22       Q.  NOW, MR. KLAUSNER, LET'S TURN TO ELEMENT E.  WE'RE  
23       DOING THIS A LITTLE OUT OF ORDER, BUT LET'S TURN TO  
24       ELEMENT E OF CLAIM 16.  LET ME PUT THAT UP FOR YOU.

25               MS. FERNANDES, MAY WE HAVE THIS PUBLISHED TO THE

1 JURY. ACTUALLY, I HAVE THE WRONG -- NO, IT'S GOOD.

2 NOW, IN YOUR CROSS-EXAMINATION TODAY,

3 MR. KLAUSNER, MR. SCHERKENBACH QUESTIONED YOU ABOUT THE

4 PERSON NAME SMART TAG UP THERE AND ABOUT THE SECOND

5 INFORMATION SEARCHED FOR. WOULD YOU TELL US, WHAT IS

6 THE SECOND INFORMATION THAT IS SEARCHED FOR IN THE

7 ACCUSED PRODUCT WITH RESPECT TO ELEMENT E OF CLAIM 16?

8 A. WELL, I'VE GIVEN AN EXAMPLE AND ALSO IN THE OTHER

9 BOARDS THAT WE HAD UP, WHERE THE SECOND INFORMATION IS

10 ASSOCIATED WITH, IS ASSOCIATED WITH -- WELL, RIGHT AT

11 THE TOP ON THE RIGHT CHART IT SAYS PERSON NAME SMART

12 TAG.

13 Q. RIGHT HERE.

14 A. THE SECOND INFORMATION IS IN THE DATABASE, IF IT IS

15 FOUND IN THE DATABASE, ASSOCIATED WITH THE PERSON'S

16 NAME. AND THAT COULD BE THE CONTACT FOR THAT PERSON,

17 BECAUSE THAT'S ASSOCIATED WITH THE PERSON'S NAME. NOW,

18 AMONG THE INFORMATION INSIDE THAT CONTACT THAT'S

19 ASSOCIATED WITH THE PERSON NAME SMART TAG IS THE ACTUAL

20 NAME AND ALSO THE ADDRESS AND ALSO PHONE NUMBER, ETC.

21 Q. SO WHEN YOU SAY HERE IT SEARCHES FOR THE PERSON'S

22 NAME IN OUTLOOK 2002 CONTACT'S DATABASE, WHAT ARE YOU

23 REFERRING TO?

24 A. I'M REFERRING TO THE PHRASE AT THE END OF ELEMENT E

25 THAT SAYS, "WITH THE FIRST INFORMATION," RIGHT AT THE

1 BOTTOM THERE.

2 Q. RIGHT THERE?

3 A. YES.

4 Q. OKAY. AND WITH RESPECT TO THAT PERSON NAME SMART  
5 TAG, WHAT IS THE SECOND INFORMATION THAT YOU'RE  
6 SEARCHING FOR?

7 A. WE'RE SEARCHING FOR SOMETHING THAT'S ASSOCIATED  
8 WITH THAT FIRST INFORMATION.

9 Q. CAN YOU GIVE US SOME EXAMPLES?

10 A. AN EXAMPLE IS -- AN EXAMPLE IS THE CONTACT  
11 INFORMATION THAT'S ASSOCIATED WITH THAT PERSON NAME, AN  
12 ADDRESS THAT'S ASSOCIATED WITH THAT PERSON NAME --

13 THE COURT: MR. FEHER, HAVEN'T WE COVERED THIS  
14 ON DIRECT EXAMINATION?

15 MR. FEHER: YES, YOUR HONOR, I'LL MOVE MORE  
16 QUICKLY.

17 Q. NOW, ON CROSS-EXAMINATION, MR. KLAUSNER,  
18 MR. SCHERKENBACH WALKED THROUGH THE MENU TO TURN ON A  
19 SMART TAG. DO YOU RECALL THAT, HE SHOWED YOU HOW TO  
20 TURN IT ON, DO YOU RECALL THAT?

21 A. YES.

22 Q. AND HE HAD IT TURNED OFF TO START; IS THAT RIGHT?

23 A. THAT'S CORRECT.

24 Q. NOW, IS THAT HOW THE ACCUSED PRODUCTS COME WHEN YOU  
25 USE IT RIGHT OUT OF THE BOX, ARE THE SMART TAGS TURNED

1 OFF?

2 A. THE MICROSOFT WORD PRODUCT, FOR EXAMPLE, HAS SMART  
3 TAGS TURNED ON AS IT COMES OUT OF THE BOX. EXCEPT ONE  
4 PARTICULAR ONE OF THE DIFFERENT TYPES OF SMART TAGS,  
5 THE PERSON NAME IS OFF, BUT THE ADDRESS IS ON, ETC.

6 Q. LET'S TURN TO ELEMENT C.

7 I'LL TRY TO DO THIS MORE QUICKLY, YOUR HONOR.

8 IN FACT, WE'RE GOING TO LOOK AT BOTH ELEMENTS B  
9 AND C, BUT LET'S START WITH ELEMENT C.

10 AND, YOUR HONOR, I REQUEST THIS BE PUBLISHED TO  
11 THE JURY, PLEASE?

12 NOW, ELEMENT C RECITES UPON A SINGLE ENTRY OF  
13 THE EXECUTE COMMAND BY MEANS OF THE INPUT DEVICE. IS  
14 THAT RIGHT?

15 A. THAT'S CORRECT.

16 Q. AND IT SPECIFICALLY USES THE WORD "THE," IS THAT  
17 RIGHT, THE EXECUTE COMMAND?

18 A. YES.

19 Q. AND IF YOU LOOK ABOVE IN ELEMENT B, WHAT IS THE  
20 EXECUTE COMMAND THAT'S REFERRED TO IN ELEMENT C?

21 MR. SCHERKENBACH: OBJECTION, YOUR HONOR, THIS  
22 IS BEYOND THE SCOPE OF THE CROSS-EXAMINATION.

23 THE COURT: SUSTAINED.

24 Q. NOW, IN THE ACCUSED PRODUCT MR. SCHERKENBACH GAVE  
25 YOU A DEMONSTRATION AND WENT THROUGH THE STEPS IN YOUR

1 CROSS-EXAMINATION TODAY OF HOW TO WORK A SMART TAG. DO  
2 YOU REMEMBER THAT?

3 A. YES.

4 Q. AND IN THE ACCUSED PRODUCT, WHEN HE WENT THROUGH  
5 THOSE STEPS, WHICH WAS THE STEP THAT EXECUTED THAT --  
6 WHERE THE USER ENTERED AN EXECUTE COMMAND TO INITIATE  
7 THE RECORD RETRIEVAL?

8 A. IT WAS THE CHOICE FROM THE MENU OF THE ACTION. AS  
9 SOON AS THE ACTION IS CHOSEN, THAT IS THE STEP OF THE  
10 SINGLE ENTRY OF THE EXECUTE COMMAND.

11 Q. OKAY. IF YOU WERE TO GO THROUGH THE STEPS THAT  
12 MR. SCHERKENBACH WENT THROUGH AND DROPPED DOWN THE MENU  
13 AND STOPPED RIGHT THERE, DOES THAT ENTER AN EXECUTE  
14 COMMAND WHICH INITIATES THE RECORD RETRIEVAL FROM THE  
15 INFORMATION SOURCE?

16 A. NO.

17 Q. WOULD YOU PLEASE EXPLAIN.

18 A. THE INITIATION OF THE RECORD RETRIEVAL AND, IN  
19 FACT, THE ANALYSIS ONLY OCCURS AFTER THAT CHOICE ON THE  
20 DROP-DOWN MENU, NOT BEFORE IT.

21 Q. NOW, YOU HAVE YOUR COMPUTER UP THERE TO  
22 DEMONSTRATE. CAN YOU DEMONSTRATE THAT FOR US, HOW  
23 DROPPING THE MENU DOESN'T INITIATE A RECORD RETRIEVAL?

24 AND YOU'LL HAVE TO CLEAR THE SCREEN FOR US WHEN  
25 YOU HAVE A CHANCE.

1     A.  I'VE TYPED MY NAME, YOU CAN SEE THAT THE  
2     RECOGNITION HAS ALREADY OCCURRED.  I NOW PUSH DOWN TO  
3     DROP THE --  
4     Q.  HOLD RIGHT THERE.  IS ANYTHING HAPPENING NOW?  
5     A.  THE CODE IS EXECUTING IN ORDER TO PERMIT THIS DROP  
6     DOWN TO OCCUR.  
7     Q.  IS IT INITIATING AN INFORMATION -- A RECORD  
8     RETRIEVAL FROM AN INFORMATION SOURCE AT THAT POINT?  
9     A.  NO.  
10    Q.  WHAT IS THE ENTRY OF THE EXECUTE COMMAND THAT  
11    INITIATES THE RECORD RETRIEVAL?  
12    A.  WHEN I CHOOSE A PARTICULAR ACTION, IN OTHER WORDS,  
13    WHEN I COMMAND THIS PROGRAM TO EXECUTE THAT ACTION,  
14    SUCH AS I'M ABOUT TO LIFT MY FINGER.  AS SOON AS I LIFT  
15    MY FINGER --  
16    Q.  BEFORE YOU LIFT YOUR FINGER, IS IT INITIATING A  
17    RECORD RETRIEVAL AT THIS POINT?  
18    A.  NO.  
19    Q.  HOW DOES IT INITIATE A RECORD RETRIEVAL?  
20    A.  AS SOON AS I LIFT MY FINGER, A RECORD RETRIEVAL IS  
21    INITIATED, THE ANALYSIS OCCURS AND THEN THE RECORD  
22    RETRIEVAL IS INITIATED NOW.  
23    Q.  SO THAT OCCURS UPON THE SELECTION OF THE MENU ITEM;  
24    IS THAT RIGHT?  
25    A.  YES, I'VE CHOSEN A MENU ITEM, AND THERE IT IS.



1 Q. OKAY, THAT'S FINE WITH THAT DEMONSTRATION. NOW,  
2 MR. SCHERKENBACH IN HIS CROSS-EXAMINATION SHOWED A  
3 CIRCUMSTANCE WHERE HE TYPED IN TWO NAMES. DO YOU  
4 REMEMBER THAT EXAMPLE?

5 A. YES.

6 Q. NOW, IF WE TURN TO THE '853 PATENT ITSELF, AND  
7 ESPECIALLY WITH RESPECT TO FIGURES 3 AND 4, WHAT, IF  
8 ANYTHING, DO THOSE FIGURES SHOW WITH RESPECT TO WHETHER  
9 THE ARENDI INVENTION IS DESIGNED TO WORK AND TO OPERATE  
10 ON THE FLY AS YOU TYPE IN THE INFORMATION?

11 A. I'M LOOKING AT FIGURES 3 AND 4 --

12 Q. I'LL PUT FIGURE 3 UP.

13 A. -- AND THEN I'M LOOKING IN THE SPECIFICATION WHERE  
14 IT DESCRIBES FIGURE 3. I'M LOOKING IN COLUMN SIX,  
15 ABOUT LINE 37. IT SAYS, "THE FIGURE 3 ILLUSTRATES A  
16 STARTING POINT IN A WORD PROCESSOR DOCUMENT, SUCH AS A  
17 WORD DOCUMENT, WHEREIN THE USER HAS TYPED THE NAME OF A  
18 CONTACT. THE USER COMMANDS THE BUTTON, FOR EXAMPLE,  
19 MARK ONE BUTTON, AND THE PROGRAM, ACCORDING TO THE  
20 PRESENT INVENTION, RETRIEVES THE NAME FROM THE  
21 DOCUMENT, SEARCHES THE DATABASE FOR THE NAME OF THE  
22 CONTACT AND GENERATES A SCREEN AS SHOWN IN, FOR  
23 EXAMPLE, FIGURE 8."

24 AND ACTUALLY, THE EXAMPLE IN COLUMN FIVE USES  
25 FIGURE 4. I'M LOOKING AT LINE NUMBER 60 ON COLUMN

1 FIVE. IT SAYS, "FIGURE 4 ILLUSTRATES A STARTING POINT  
2 IN WORD PROCESSOR DOCUMENTS SUCH AS A WORD DOCUMENT  
3 WHEREIN THE USER HAS TYPED A NAME AND THE USER HITS THE  
4 BUTTON, FOR EXAMPLE, MARK ONE BUTTON, AND THE PROGRAM,  
5 ACCORDING TO THE PRESENT INVENTION, RETRIEVES THE NAME  
6 FROM THE DOCUMENT, SEARCHES THE DATABASE FOR THE NAME  
7 AND INSERTS THE RETRIEVED ADDRESS ASSOCIATED WITH THE  
8 NAME INTO THE DOCUMENT AS SHOWN IN, FOR EXAMPLE, FIGURE  
9 4. IT'S IN COLUMN FIVE, LINE 60.

10 Q. TO TURN BACK TO FIGURE 3, THE USER TYPES IN THE  
11 NAME --

12 MR. SCHERKENBACH: OBJECTION, LEADING.

13 THE COURT: HAD YOU FINISHED THE QUESTION, MR.  
14 FEHER?

15 MR. FEHER: I'LL REPHRASE THE QUESTION.

16 THE COURT: IRRETRIEVABLE AT THIS POINT IT  
17 SOUNDS LIKE, TO COIN A TERM.

18 Q. THE USER TYPES IN THE NAME, WOULD YOU THEN EXPLAIN  
19 WITH RESPECT TO FIGURE 4 WHAT HAPPENS?

20 A. THE USER HAS TYPED IN A NAME AS WE SEE IN FIGURE 3  
21 AND THEN GOING TO FIGURE 4 --

22 Q. LET ME TURN TO FIGURE 4.

23 A. -- THE INFORMATION ASSOCIATED WITH THAT NAME, IN  
24 THIS CASE THE ADDRESS IS INSERTED INTO THE DOCUMENT AS  
25 PER COLUMN FIVE OF THE SPECIFICATION OF THE PATENT.

1 Q. AND WHEN IN THIS EXAMPLE DOES THE USER INSERT THE  
2 ADDRESS OR -- STRIKE THAT.

3 WHEN DOES THE USER IN THIS EXAMPLE HIT THE  
4 BUTTON TO INSERT THE ADDRESS INFORMATION?

5 A. THE USER HAS TYPED THE NAME IN AND THEN THEY CHOOSE  
6 THE ACTION OR THE SINGLE ENTRY OF THE EXECUTE COMMAND,  
7 AND THEN ANALYSIS OCCURS, AND THEN THE INFORMATION IS  
8 SEARCHED FOR IN THE DATABASE, THAT'S OUTSIDE OF THIS  
9 PROGRAM, AND INSERTED BACK AS WE SEE HERE.

10 Q. OKAY, THANK YOU. NOW, MR. SCHERKENBACH SHOWED YOU  
11 ON CROSS-EXAMINATION EXHIBIT 341. MAY I HAVE THIS  
12 PUBLISHED, PLEASE?

13 THE COURT: IT IS AN EXHIBIT, ISN'T IT?

14 MR. FEHER: IT IS AN EXHIBIT, YOUR HONOR, IT'S  
15 IN.

16 Q. AND I WOULD ALSO LIKE FOR YOU TO TAKE A LOOK AT  
17 COLUMN ONE, LINES 11 THROUGH 12 OF THE '853 PATENT.

18 A. I HAVE IT.

19 Q. AND WHAT DOES THE '853 PATENT ITSELF INDICATE WITH  
20 RESPECT TO WHETHER A MENU IS CONSIDERED A BUTTON UNDER  
21 THE PATENT?

22 DOING IT THE WRONG WAY, LET ME ZOOM IN HERE.

23 A. THE COLUMN ONE OF THE PATENT SAYS THAT THE MENU IS  
24 HEREINAFTER CALLED A BUTTON, IN OTHER WORDS, AS I  
25 UNDERSTAND IT, THE TOUCH SCREEN, THE KEYBOARD BUTTON,

1 THE ICON, THE MENU, THE VOICE COMMAND DEVICE ARE ALL  
2 HEREINAFTER CALLED BUTTON.

3 Q. AND WHAT DOES EXHIBIT 341 SHOW WITH RESPECT TO  
4 WHETHER THE SMART TAGS MENU HAS BEEN CHARACTERIZED AS A  
5 BUTTON BY MICROSOFT?

6 MR. SCHERKENBACH: OBJECTION, LACKS FOUNDATION.

7 THE COURT: SUSTAINED.

8 Q. WHAT DOES EXHIBIT 341 SHOW WITH RESPECT TO THE MENU  
9 AND A BUTTON?

10 AGAIN, I WOULD LIKE TO HAVE THIS PUBLISHED TO  
11 THE JURY, YOUR HONOR.

12 A. IT SHOWS THAT SOMETHING REFERRED TO AS A BUTTON IS  
13 THAT. (WITNESS INDICATING)

14 Q. AND IF YOU WOULD RETURN TO THE SECOND PAGE OF THAT  
15 WHERE I'VE INDICATED HERE. WHAT DOES THAT SAY WITH  
16 RESPECT TO THE BUTTON?

17 A. IT SAYS THAT YOU CAN USE THE SMART TAG ACTIONS  
18 BUTTON TO CREATE A NEW CONTACT IN OUTLOOK, ETC.

19 MR. FEHER: YOUR HONOR, IF I CAN HAVE A MOMENT,  
20 I THINK I MAY BE DONE. NO FURTHER QUESTIONS.

21 THE COURT: YOU MAY STEP DOWN, MR. KLAUSNER.

22 (WITNESS EXCUSED)

23 THE COURT: YOU DON'T HAVE ANY EXHIBITS WITH  
24 YOU, DO YOU, MR. KLAUSNER?

25 THE WITNESS: I DO NOT, YOUR HONOR.

1           MR. HAYES: YOUR HONOR, WE WOULD LIKE TO READ IN  
2           A PORTION OF MR. YODER'S DEPOSITION. THANK YOU. AND  
3           WE'LL READ IN BOTH OUR PORTION AND THEIR PORTION. AND  
4           YOU CAN READ IT IN AND MR. CROSBY CAN PLAY YODER.

5           THE COURT: JUST TO EXPLAIN, LADIES AND  
6           GENTLEMEN, WHAT MR. FEHER AND MR. HAYES PROPOSE TO DO  
7           HERE, BEFORE A CASE COMES TO TRIAL, THE LAWYERS ARE  
8           GIVEN AN OPPORTUNITY TO ENGAGE IN WHAT'S CALLED  
9           DISCOVERY. AND IN DOING THE DISCOVERY THEY CAN  
10          QUESTION POTENTIAL WITNESSES OR INDIVIDUALS WITH  
11          KNOWLEDGE OF THE FACTS INVOLVED IN THE CASE. AND WHEN  
12          THEY DO THAT, IT'S DONE IN THE FORM OF WHAT'S CALLED A  
13          DEPOSITION. THE INDIVIDUAL THAT THEY WISH TO QUESTION  
14          IS BROUGHT IN TO, USUALLY THE OFFICE OF THE LAWYER WHO  
15          WANTS TO TAKE THE DEPOSITION. ALL THE LAWYERS IN THE  
16          CASE ARE PRESENT, AND A COURT REPORTER, A STENOGRAPHER  
17          IS PRESENT. AND THE REPORTER RECORDS THE QUESTIONS  
18          THAT ARE QUESTIONED BY THE LAWYERS AND THE ANSWERS THAT  
19          ARE GIVEN BY THE WITNESS.

20          AND WHAT MR. FEHER PROPOSES TO READ NOW IS A  
21          PORTION OF THE DEPOSITION OF MR. YODER, A MICROSOFT  
22          EMPLOYEE, THAT WAS TAKEN AT SOME TIME PRIOR TO TRIAL.

23          WHEN WAS THE DEPOSITION TAKEN, MR. FEHER?

24          MR. FEHER: YOUR HONOR, IT WAS TAKEN ON FEBRUARY  
25          6, 2004.

1           THE COURT:  THE WITNESS IS SWORN AT THE  
2       BEGINNING OF THE DEPOSITION TO TELL THE TRUTH UNDER  
3       OATH AND IS QUESTIONED IN THE SAME MANNER AS THE  
4       WITNESS WOULD BE QUESTIONED IF HE OR SHE APPEARED AND  
5       TESTIFIED BEFORE YOU.  AND WHEN THE WITNESS IS AN  
6       EMPLOYEE OR AN OFFICIAL OF A PARTY INVOLVED IN THE  
7       CASE, THAT TESTIMONY HAS THE SAME EFFECT AS IF THE  
8       PERSON APPEARED AND PERSONALLY TESTIFIED, EXCEPT, OF  
9       COURSE, YOU DON'T GET A CHANCE TO OBSERVE THE  
10      INDIVIDUAL AS HE OR SHE IS TESTIFYING.

11           SO THIS IS NOT MR. YODER ON THE STAND HERE, BUT  
12      THIS GENTLEMAN IS GOING TO PLAY THE PART OF MR. YODER.  
13      SO MR. FEHER WILL READ THE QUESTIONS THAT WERE ASKED,  
14      OR AT LEAST THE QUESTIONS THAT HE WANTS TO HAVE YOU  
15      CONSIDER, AND THE ANSWERS ARE GIVEN BY MR. YODER.

16           ARE YOU GOING TO READ THE QUESTIONS  
17      MR. SCHERKENBACH ASKED ALSO?

18           MR. FEHER:  YES.

19           THE COURT:  MR. SCHERKENBACH ASKED A FEW  
20      QUESTIONS ALSO, AND MR. FEHER WILL READ THE QUESTIONS  
21      THAT MR. SCHERKENBACH ASKED AS WELL.

22           (MR. DAVID CROSBY SWORN TO GIVE TESTIMONY OF  
23      DOUGLAS YODER)

24           THE CLERK:  STATE AND SPELL YOUR NAME.

25           THE WITNESS:  DAVID CROSBY.  D-A-V-I-D,

1 C-R-O-S-B-Y.

2 MR. FEHER: YOUR HONOR, JUST A POINT OF  
3 CLARIFICATION, MR. YODER IS A FORMER MICROSOFT  
4 EMPLOYEE.

5 THE FOLLOWING DEPOSITION TESTIMONY WAS READ INTO  
6 THE RECORD OF WITNESS DOUGLAS YODER:

7 BY MR. FEHER:

8 Q. "WOULD YOU STATE YOUR NAME, SIR?

9 A. DOUGLAS YODER.

10 Q. YOU ARE NOT WORKING FOR MICROSOFT AT THE PRESENT  
11 TIME; CORRECT?

12 A. CORRECT.

13 Q. LET'S JUST START, WHAT WAS YOUR JOB AT MICROSOFT IN  
14 MAY OF 2001?

15 A. MAY 2001 I WORKED FOR ANDERS BROWN, WHO WAS IN THE  
16 OFFICE MARKETING GROUP AND HE WAS RESPONSIBLE -- OUR  
17 GROUP WAS RESPONSIBLE FOR EVANGELIZING OFFICE TO  
18 DEVELOPERS. SO MY JOB WAS TO EVANGELIZE DEVELOPERS TO  
19 CREATE SOLUTIONS USING OFFICE, AND I WAS A TECHNICAL  
20 PRODUCT MANAGER.

21 Q. WHAT DO YOU MEAN WHEN YOU SAY EVANGELIZING  
22 CUSTOMERS?

23 A. YOU WANT TO ENCOURAGE DEVELOPERS TO CREATE  
24 SOLUTIONS USING OFFICE.

25 Q. NOW, IN THE OFFICE XP PRODUCT IF YOU ARE TYPING

1       ALONG AND YOU TYPE A NAME, FOR EXAMPLE, AN ICON WILL  
2       POP UP; RIGHT?

3       A.   ONLY IF YOU MOVE YOUR MOUSE AND HOVER OVER IT.

4       Q.   WHEN YOU ARE TYPING ALONG IN OFFICE XP, AND LET'S  
5       ASSUME YOU TYPE A NAME -- ARE YOU WITH ME?

6       A.   YES.

7       Q.   WHEN YOU TYPE ALONG AND THE NAME IS TYPED, A LITTLE  
8       SQUIGGLY LINE AUTOMATICALLY GOES UNDER THE NAME;  
9       CORRECT?

10      A.   ACTUALLY, IT'S A DOTTED LINE.

11      Q.   NOW, WHEN YOU MOVE THE MOUSE OVER THE NAME WITH THE  
12      DOTTED LINE UNDER IT, AN ICON POPS UP AUTOMATICALLY;  
13      CORRECT?

14      A.   AN OOUY.

15      Q.   WHICH IS CONSIDERED AN ICON; CORRECT?

16      A.   WELL, TECHNICALLY IT'S NOT AN ICON.

17      Q.   IT IS COMMONLY REFERRED TO AS AN ICON, ISN'T THAT  
18      CORRECT?   WOULD THAT BE FAIR?

19      A.   IF YOU WANT TO REFER TO IT THAT WAY, I ALWAYS REFER  
20      TO IT AS AN OOUY.

21      Q.   THIS ICON APPEARS ABOVE THE DOTTED LINE WITHOUT THE  
22      PRESSING OF THE MOUSE; CORRECT?

23      A.   THE OOUY APPEARS TO THE RIGHT, I BELIEVE, OF THE  
24      THING AFTER HOVERING OVER IT, THE MOUSE.

25      Q.   NOW, IF YOU DEPRESS THE MOUSE, THEN A MENU WILL



1       APPEAR; CORRECT?

2       A.   YES.

3       Q.   AND IF YOU DRAG THE MOUSE DOWN TO THE PLACE IN THE

4       MENU THAT YOU WANT TO GET, AND LIFT THE MOUSE BUTTON,

5       THEN YOU AUTOMATICALLY HAVE THE ADDRESS OF THAT

6       INDIVIDUAL INSERTED IN THE DOCUMENT, CORRECT?

7       A.   I'M TRYING TO THINK HOW MENUS WORK.  I USUALLY

8       CLICK IT AND THEN CLICK THE MENU OPTION.  I WOULD HAVE

9       TO LOOK AT IT.  I GUESS YOU CAN DO THAT, I'M NOT SURE.

10      I GUESS -- I WOULD HAVE TO SEE IT IN ACTION TO MAKE

11      SURE.

12      Q.   HOW LONG DID YOU WORK ON IT?

13      A.   WELL, MENUS WORK DIFFERENTLY AND PEOPLE USE MENUS

14      DIFFERENTLY.

15      Q.   ISN'T IT A FACT, SIR, THAT YOU CAN DEPRESS THE

16      MOUSE BUTTON AND THEN WHEN YOU DO THAT, NOW THAT YOU

17      ARE ON THE ICON, YOU DEPRESS THE MOUSE BUTTON, THE MENU

18      AUTOMATICALLY APPEARS; CORRECT?

19      A.   YES.

20      Q.   AND YOU CAN DRAG THAT MOUSE DOWN TO, FOR EXAMPLE,

21      ADDRESS, RELEASE THE MOUSE BUTTON, AND THE ADDRESS WILL

22      THEN -- ADDRESS THEN WILL AUTOMATICALLY BE INSERTED IN

23      THE DOCUMENT?

24      A.   I GUESS SO, YES.

25      Q.   AND THAT WOULD ALL OCCUR WITH ONE CLICK OF THE

1       MOUSE, CORRECT?

2       A.   I GUESS IN THAT ROUTINE, YES, YOU WOULD HAVE ONE  
3       CLICK."

4               MR. FEHER:  NOTHING FURTHER, YOUR HONOR.

5               THE COURT:  YOU MAY STEP DOWN, MR. CROSBY.

6               MR. HAYES:  YOUR HONOR, THE NEXT WITNESS IS  
7       MS. MICH MATHEWS, WHO IS AN EMPLOYEE OF MICROSOFT.  AND  
8       WE'LL SHOW THAT BY VIDEO, WITH THE COURT'S PERMISSION  
9       TO PUBLISH IT TO THE JURY.

10              (VIDEOTAPE DEPOSITION SHOWN OF MICH MATHEWS)

11              THE COURT:  WILL YOU STOP THE TAPE A MOMENT.  
12       COUNSEL.  DO YOU HAVE AN AGREED UPON TRANSCRIPT OF THIS  
13       STATEMENT?

14              MR. HAYES:  WELL, WE HAVE PROVIDED THE VIDEO TO  
15       MY BROTHER AND SO --

16              THE COURT:  I'M JUST WONDERING IF THE COURT  
17       REPORTER NEEDS TO TRANSCRIBE WHAT'S BEING SAID ON THE  
18       VIDEOTAPE OR WHETHER YOU HAVE AN AGREED UPON  
19       TRANSCRIPT?

20              MR. HAYES:  WE CAN PROVIDE THE COURT REPORTER  
21       WITH THE AGREED UPON TRANSCRIPT AFTER THIS, SO I DON'T  
22       THINK SHE HAS TO TAKE IT DOWN, JUDGE.

23              THE COURT:  OKAY.  WOULD YOU GO BACK TO THE  
24       BEGINNING, PLEASE.

25

1 THE FOLLOWING IS A TRANSCRIPTION OF VIDEOTAPED  
2 DEPOSITION OF EXAMINATION BY MR. HAYES OF WITNESS MICH  
3 MATHEWS:  
4 Q. "WOULD YOU STATE YOUR NAME.  
5 A. MICH MATHEWS.  
6 Q. WHAT WOULD YOU LIKE ME TO CALL YOU? MS. MATHEWS OR  
7 WHAT?  
8 A. YOU CAN CALL ME MICH. IT'S FINE BY ME.  
9 Q. ALL RIGHT. HAVE YOU EVER BEEN DEPOSED BEFORE?  
10 A. I HAVE NOT.  
11 Q. WOULD YOU HAVE A -- IF YOU DO NOT UNDERSTAND A  
12 QUESTION THAT I ASK, I WOULD APPRECIATE IT IF YOU WOULD  
13 TELL ME, OTHERWISE I'LL JUST ASSUME YOU UNDERSTAND IT.  
14 OKAY?  
15 A. YES.  
16 Q. NOW, COULD YOU GIVE ME YOUR HOME ADDRESS, PLEASE.  
17 A. 4444 95TH AVENUE NORTHEAST, BELLEVUE, WASHINGTON,  
18 98004.  
19 Q. HOW LONG HAVE YOU BEEN EMPLOYED BY MICROSOFT?  
20 A. SINCE 1993.  
21 Q. WHAT IS YOUR POSITION, WHAT DO YOU DO?  
22 A. I RUN THE CORPORATE MARKETING GROUP.  
23 Q. YOU ARE, I UNDERSTAND, A COPORTATE VP OF MARKETING  
24 AT MICROSOFT?  
25 A. WELL, I'M A CORPORATE VICE PRESIDENT, AND I RUN THE

1 CORPORATE MARKETING GROUP. WE HAVE MULTIPLE MARKETING  
2 VICE PRESIDENTS.

3 Q. AND HOW LONG HAVE YOU HELD THIS POSITION AS RUNNING  
4 THE MARKETING GROUP OF MICROSOFT?

5 A. I DON'T KNOW OFF THE TOP OF MY HEAD. PROBABLY THE  
6 LAST TWO TO THREE YEARS AND TWO YEARS, TWO-AND-A-HALF  
7 YEARS IN THIS PARTICULAR POSITION.

8 Q. SO THAT WOULD BE AROUND SOMETIME IN 2001, MID-2001?

9 A. YES, THAT SOUNDS ABOUT RIGHT.

10 Q. AND AS CORPORATE VP FOR MARKETING, YOU'RE  
11 RESPONSIBLE FOR MICROSOFT'S WORLDWIDE MARKETING AND  
12 COMMUNICATIONS STRATEGIES; CORRECT?

13 A. CORRECT.

14 Q. THERE IS ALSO SOMETHING IN MICROSOFT THAT WE HAVE  
15 CALLED MICROSOFT'S BUSINESS LEADERSHIP TEAM; CORRECT?

16 A. YES.

17 Q. COULD YOU TELL US WHAT THAT IS?

18 A. THE GROUP IS ABOUT 30, ABOUT 30 -- SOMEWHERE  
19 BETWEEN 20 AND 30 CORPORATE VICE PRESIDENTS. WE MEET  
20 QUARTERLY.

21 Q. AND YOU'RE A MEMBER OF THIS MICROSOFT BUSINESS  
22 LEADERSHIP TEAM, CORRECT?

23 A. CORRECT.

24 Q. AND HOW LONG HAVE YOU BEEN A MEMBER OF THE  
25 CORPORATE BUSINESS LEADERSHIP TEAM?

1 A. SINCE IT WAS FORMED SEVEN YEARS AGO.

2 Q. THIS TEAM SHARES THE RESPONSIBILITY, I ASSUME, FOR  
3 BROAD STRATEGIC AND BUSINESS PLANNING FOR THE ENTIRE  
4 MICROSOFT COMPANY, CORRECT?

5 A. IT'S EVOLVED A LITTLE BIT AS BEING NEW GROUPS OF  
6 PEOPLE FORMED SINCE THE BUSINESS LEADERSHIP TEAM, WHO  
7 HAVE -- WHO TAKE ON SOME OF THOSE RESPONSIBILITIES IN  
8 ADDITION TO THE BLT.

9 Q. WELL, LET ME SHOW YOU WHAT WE'LL CALL MATHEWS  
10 EXHIBIT 1, A DOCUMENT PRODUCED FROM THE MICROSOFT  
11 WEBSITE ENTITLED, "PRESSPASS - INFORMATION FOR  
12 JOURNALISTS."

13 AND COULD YOU TELL US WHAT EXHIBIT 1 IS, SIR --  
14 IS, MA'AM?

15 A. IT LOOKS LIKE THE PRESSPASS BIOGRAPHY.

16 Q. AND THIS WOULD HAVE BEEN PUBLISHED BY MICROSOFT;  
17 RIGHT?

18 A. BY THE PRESSPASS GROUP, YES.

19 Q. AND IT'S A BIOGRAPHY OF YOU?

20 A. CORRECT.

21 Q. AND IF YOU LOOK AT THE THIRD PARAGRAPH, IT SAYS  
22 'MATHEWS IS A MEMBER OF MICROSOFT'S BUSINESS LEADERSHIP  
23 TEAM, A GROUP THAT SHARES RESPONSIBILITY WITH STEVE  
24 BALMER, MICROSOFT'S CHIEF EXECUTIVE OFFICER, FROM BROAD  
25 STRATEGIC AND BUSINESS PLANNING FOR THE ENTIRE

1       COMPANY.'

2       A.   RIGHT.

3       Q.   IS THAT STATEMENT TRUE?

4       A.   YES, KIND OF, BUT AS I SAID, THERE'S OTHER TEAMS

5       THAT ALSO PARTICIPATE IN THIS.

6       Q.   AND HAVE YOU SEEN YOUR BIOGRAPHY BEFORE TODAY?

7       A.   YES.

8       Q.   AND DID YOU EVER REQUEST THAT THAT PARAGRAPH 3 BE

9       CHANGED?

10      A.   PROBABLY THE LAST TIME I LOOKED AT MY BIOGRAPHY WAS

11      SEVERAL YEARS AGO WHEN THIS WAS PROBABLY WRITTEN.

12      Q.   DID YOU EVER REQUEST, THE QUESTION IS?

13      A.   NO, I HAVE NOT.

14      Q.   -- DID YOU EVER REQUEST THAT THAT PARAGRAPH BE

15      CHANGED IN ITS DESCRIPTION?

16      A.   NOPE.

17      Q.   AND WHO IS STEVE BALMER?

18      A.   HE'S THE CEO OF MICROSOFT.

19      Q.   AND AS PART OF YOUR ACTIVITIES AT MICROSOFT, DO YOU

20      HAVE AN OPPORTUNITY TO INTERREACT WITH HIM?

21      A.   YES.

22      Q.   AND DO YOU HAVE, AS PART OF YOUR OPPORTUNITY --

23      STRIKE THAT -- AS PART OF YOUR DUTIES AND

24      RESPONSIBILITIES, DO YOU HAVE AN OPPORTUNITY TO

25      INTERREACT WITH MR. GATES?

1 A. YES.

2 Q. OKAY. EXCUSE ME. AND DO YOU KNOW WHO STEVEN

3 SINOFSKY IS?

4 A. YES.

5 Q. AND WHO IS MR. SINOFSKY?

6 A. HE WORKS FOR JEFF RAIKES.

7 Q. AND WHAT IS HIS POSITION AT MICROSOFT?

8 A. I COULDN'T TELL YOU PRECISELY, BUT HE RUNS THE

9 OFFICE GROUP.

10 Q. AND HAVE YOU EVER SPOKEN AND INTERREACTED WITH HIM

11 PRIOR TO TODAY?

12 A. YES.

13 Q. NOW, YOU'RE FAMILIAR WITH A PRODUCT OFFERED BY

14 MICROSOFT CALLED OFFICE XP; CORRECT?

15 A. YES.

16 Q. AND OFFICE XP WAS LAUNCHED APPROXIMATELY IN MAY

17 2001; CORRECT?

18 A. SOUNDS ABOUT RIGHT."

19 THE COURT: WOULD YOU STOP THE TAPE, PLEASE.

20 (BRIEF CONFERENCE WITH REPORTER)

21 (VIDEOTAPE RESUMES)

22 Q. "AND ONE OF THE CORE TECHNOLOGIES IN OFFICE XP IS

23 SMART TAGS; CORRECT?

24 A. WHAT DO YOU MEAN BY TECHNOLOGIES?

25 Q. YOU DON'T KNOW WHAT THE WORD TECHNOLOGY MEANS?

1 A. TECHNOLOGY COULD MEAN ANYTHING. YOU CATEGORIZE  
2 SMART TAGS AS A TECHNOLOGY.

3 Q. ONE OF THE CORE TECHNOLOGIES IN OFFICE XP IS SMART  
4 TAGS; ISN'T THAT CORRECT, MA'AM?

5 A. SMART TAGS IS A FEATURE WITHIN OFFICE XP.

6 Q. LET ME SHOW YOU, IF I WILL, WHAT WE'D LIKE TO MARK  
7 AT MATHEWS EXHIBIT 2. AND WHILE I'M GETTING THAT, YOU  
8 WERE AROUND AT THE ANNOUNCEMENT OF OFFICE XP IN MAY OF  
9 2001; CORRECT?

10 A. WHAT DOES 'ANNOUNCEMENT' MEAN? WHAT DO YOU MEAN  
11 'AROUND'?

12 Q. YOU DON'T KNOW WHAT THE WORD ANNOUNCEMENT MEANS?

13 A. WHAT DO YOU MEAN BY AROUND?

14 Q. AT MICROSOFT.

15 A. I WAS AT MICROSOFT, YES.

16 Q. AND YOU WERE AWARE OF THAT ANNOUNCEMENT --

17 A. YES.

18 Q. -- AT AROUND THE TIME THAT IT WAS MADE?

19 A. YES.

20 Q. BECAUSE IT WAS A BIG THING AT THE TIME, AT  
21 MICROSOFT, THIS OFFICE XP, CORRECT?

22 A. WHAT DO YOU MEAN BY 'BIG THING'?

23 Q. IT WAS CONSIDERED A SIGNIFICANT EVENT?

24 A. OFFICE XP WAS ONE OF SEVERAL PRODUCTS THAT WE  
25 LAUNCHED THAT YEAR.



1 Q. OFFICE XP WAS CONSIDERED A SIGNIFICANT EVENT;  
2 CORRECT?

3 A. ARE YOU ASKING MY VIEW?

4 Q. YOU'RE THE WITNESS.

5 A. IT WAS A NEW VERSION OF OUR OFFICE PRODUCT, AND  
6 WOULD BE SOMETHING THAT WE WOULD ACTIVELY MARKET AND  
7 PROMOTE. SO IF IN YOUR VERNACULAR THAT CONSTITUTES A  
8 SIGNIFICANT EVENT ...

9 Q. SO YOU'LL AGREE WITH ME THAT IT WAS A MAJOR  
10 RELEASE, OFFICE XP?

11 A. YUP.

12 Q. AND ISN'T IT TRUE, MA'AM, THAT AS VP OF MARKETING,  
13 YOUR STRATEGY FROM DAY ONE OF THE INITIAL LAUNCH OF  
14 OFFICE XP, WAS TO MESSAGE AROUND HOPE -- IN THAT  
15 PRODUCT, HOPE AND FEAR; CORRECT?

16 A. NO, THAT WAS NOT OUR MARKETING STRATEGY.

17 Q. AND ISN'T IT TRUE THAT THE MARKETING STRATEGY WAS  
18 NOT ONLY TO MESSAGE AROUND HOPE AND FEAR, BUT WAS TO  
19 EXPLOIT THE NOTION THAT CUSTOMERS WERE LEFT BEHIND IF  
20 YOU DON'T HAVE OFFICE XP?

21 A. NO, THAT IS NOT THE MARKETING STRATEGY.

22 Q. AND ISN'T IT TRUE THAT THE STRATEGY AND THE NOTION  
23 OF THE STRATEGY OF MESSAGING AROUND HOPE AND FEAR, WAS  
24 TO EXPLOIT THE NOTION THAT THE CUSTOMER WAS LEFT BEHIND  
25 ON OFFICE XP BECAUSE HE DID NOT HAVE THE NEW

1 BREAKTHROUGH OF SMART TAGS?

2 A. I DON'T UNDERSTAND YOUR QUESTION. ARE YOU TALKING  
3 ABOUT AN OVERALL MARKETING STRATEGY OR ARE YOU TALKING  
4 ABOUT THE IMPLEMENTATION OF MARKETING DISCIPLINE?

5 Q. LET ME SHOW YOU, MA'AM, A DOCUMENT WHICH I'D LIKE  
6 TO MARK AS EXHIBIT 5. I THINK WHEN WE LEFT OFF, I  
7 ASKED YOU TO LOOK AT EXHIBIT 5. DO YOU HAVE THAT IN  
8 FRONT OF YOU?

9 A. I DO.

10 Q. THAT IS AN E-MAIL FROM YOU TO MR. GATES, CORRECT?

11 A. YES.

12 Q. AND THAT WOULD HAVE BEEN SENT BY YOU ON OR ABOUT  
13 FEBRUARY 17, 2001, AS INDICATED THEREIN, CORRECT?

14 A. YES.

15 Q. AND IS ALSO AN E-MAIL TO CHRISTINE TURNER, CORRECT?

16 A. YES.

17 Q. AND WHO IS CHRISTINE TURNER?

18 A. SHE'S BILL'S ASSISTANT.

19 Q. AND CC TO JOSEPH KRAWCZAK AND THESE OTHER  
20 INDIVIDUALS. DO YOU KNOW WHO THOSE ARE?

21 A. YES.

22 Q. AND WHO ARE THEY?

23 A. JOSEPH KRAWCZAK IS THE HEAD OF OFFICE MARKETING AT  
24 THE TIME. MIKE DELMAN RUNS ADVERTISING. JIM MINERVINO  
25 RUNS PACKAGING, RESEARCH.

1 Q. AND THE SUBJECT OF THIS E-MAIL OF YOURS OF FEBRUARY  
2 17, 2001 WAS OFFICE XP; CORRECT?

3 A. THE SUBJECT IS OFFICE AND XML.

4 Q. NOW, IF YOU LOOK AT THE FOURTH PARAGRAPH DOWN, DO  
5 YOU SEE THAT?

6 A. YES.

7 Q. AND THAT PARAGRAPH WAS WRITTEN BY YOU ON OR AROUND  
8 FEBRUARY 17, 2001, WHEN YOU WERE AT THE HEAD OF THE  
9 MARKETING DEPARTMENT, CORRECT?

10 A. NO, I WAS NEVER THE HEAD OF THE MARKETING  
11 DEPARTMENT.

12 Q. YOU WERE THE HEAD OF WHAT?

13 A. THE COMPANY DOESN'T HAVE A HEAD OF MARKETING.

14 Q. WHAT DID YOU SAY YOU WERE HEAD OF?

15 A. THE CENTRAL MARKETING ORGANIZATION.

16 Q. SO PARAGRAPH 4 WAS WRITTEN BY YOU ON OR ABOUT  
17 FEBRUARY 17, 2001, WHEN YOU WERE THE HEAD OF THE  
18 CENTRAL MARKETING ORGANIZATION IN MICROSOFT; CORRECT?

19 A. YES.

20 Q. AND IN PARAGRAPH 4, YOU STATE, 'CURRENTLY WE ARE IN  
21 A STRATEGY TO MESSAGE AROUND HOPE AND FEAR'; CORRECT,  
22 THAT'S WHAT YOU SAID?

23 A. YES.

24 Q. AND YOU WENT ON TO SAY, 'EXPLOITING THE NOTION THAT  
25 YOU WILL BE REALLY LEFT BEHIND IF YOU DON'T HAVE OFFICE

1 XP'; CORRECT? THAT'S WHAT YOU SAID THEN?

2 A. YES.

3 Q. 'THE CREATIVE FOCUS ON THE NEW BREAKTHROUGHS,'

4 THAT'S YOUR LANGUAGE, 'NEW BREAKTHROUGHS,' RIGHT?

5 A. THAT'S WHAT IT SAYS THERE.

6 Q. AND THE FIRST EXAMPLE OF THE NEW BREAKTHROUGHS THAT

7 YOU REFER TO IN THIS E-MAIL RELATING TO A STRATEGY TO

8 MESSAGE AROUND HOPE AND FEAR, IS SMART TAGS; CORRECT?

9 A. THIS IS REGARDING AN ADVERTISING STRATEGY.

10 Q. THE FIRST FEATURE THAT YOU REFERENCE OF THE NEW

11 BREAKTHROUGHS IN THIS E-MAIL IS SMART TAGS; CORRECT?

12 A. I MENTIONED THE THREE FEATURES. THE FIRST ONE IS

13 SMART TAGS.

14 Q. SO THE ANSWER TO MY QUESTION IS THE FIRST FEATURE

15 THAT YOU REFERENCE AS A NEW BREAKTHROUGH UPON WHICH YOU

16 INTEND TO MESSAGE THIS STRATEGY IS SMART TAGS; CORRECT?

17 A. MESSAGE THE ADVERTISING, YES."

18 (END OF VIDEOTAPED DEPOSITION OF WITNESS MICH

19 MATHEWS)

20 MR. HAYES: YOUR HONOR, GIVEN THAT, WE'D OFFER

21 EXHIBIT 186, WHICH IS THE EXHIBIT REFERRED TO BY THE

22 WITNESS, AND WITH THE COURT'S PERMISSION, I WOULD LIKE

23 TO PUBLISH IT TO THE JURY.

24 THE COURT: TAKE IT ONE STEP AT A TIME.

25 MR. SCHERKENBACH: NO OBJECTION TO

1       ADMISSIBILITY, YOUR HONOR.

2               THE COURT: 186 MAY BE MARKED AS A FULL EXHIBIT.

3               (PLAINTIFF'S EXHIBIT 186 ADMITTED IN FULL)

4               THE COURT: AND WHY IS IT NECESSARY TO PUBLISH  
5       IT T TO THE JURY?

6               MR. HAYES: JUST SO THAT THE WITNESS WAS TALKING  
7       ABOUT A PARTICULAR EXHIBIT, WHERE I QUESTIONED HER ON  
8       PARAGRAPH 4, AND I WOULD LIKE THE JURY TO SEE IT. IF  
9       SHE WAS HERE IN PERSON, THEY WOULD HAVE PROBABLY  
10      ALREADY SEEN IT.

11              THE COURT: YOU ARE GOING TO PUT IT UP ON THE  
12      ELMO, IS THAT WHAT YOU'RE --

13              MR. HAYES: IT'S ON THE ELMO.

14              THE COURT: ALL RIGHT. HOW LENGTHY IS IT, ONE  
15      PAGE?

16              MR. HAYES: YES, SIR

17              (JURORS REVIEWING DOCUMENT ON MONITORS)

18              THE COURT: ALL RIGHT, MADAM CLERK, YOU MAY TAKE  
19      IT OFF THE ELMO.

20              MR. HAYES: THANK YOU, YOUR HONOR.

21              MAY WE APPROACH?

22              THE COURT: ALL RIGHT.

23              (BENCH CONFERENCE HELD ON THE RECORD)

24              MR. HAYES: I DON'T THINK THERE IS ANY  
25      PARTICULAR REASON TO GO THROUGH READING ALL THIS GOLDEN

1 DISC STUFF TO THE JURY, BECAUSE OBVIOUSLY YOU'RE THE  
2 ONE THAT IS GOING TO MAKE THE DECISION ABOUT THE DAMAGE  
3 THING, BUT I HAVE TO GET IT INTO EVIDENCE. SO IF IT IS  
4 OKAY WITH MY BROTHER, WE'LL AGREE THAT IT'S IN, YOU  
5 KNOW. IS THAT OKAY?

6 MR. SCHERKENBACH: YES.

7 MR. HAYES: I DON'T WANT TO, SAY, REST AND THEN  
8 NOT HAVE IT IN.

9 MR. SCHERKENBACH: WE HAVE NO OBJECTION, IT IS  
10 THE DESIGNATED TESTIMONY FROM THE THREE WITNESSES,  
11 AHEARN, GOLDMAN, SENF. IT HAS TO DO WITH GOLDEN MASTER  
12 AND SOME UNDERLYING FACTS FOR FOREIGN SALES. WE HAVE  
13 NO OBJECTION TO THE TESTIMONY BEING PUT IN THE RECORD,  
14 I ACTUALLY AGREE THAT IT WOULDN'T MAKE SENSE TO READ IT  
15 TO THE JURY, BECAUSE IT IS FUNDAMENTALLY A DAMAGES  
16 ISSUE. IT DOES HAVE SOME BEARING ON THE DIRECT  
17 INFRINGEMENT ISSUE AS WELL; HOWEVER, IT IS IRRELEVANT.

18 THE COURT: SO WHAT'S THE PURPOSE FOR WHICH THIS  
19 WOULD BE ADMITTED AT THIS PHASE OF THE TRIAL?

20 MR. HAYES: WELL, NO, THE REASON BEING IS THAT I  
21 HAVE TO PROVE INFRINGEMENT ON THE FOREIGN STUFF AND ONE  
22 OF THE INFRINGEMENTS IS, A, THEY SELL IT AND ALL THE  
23 REST. BUT, THEN, YOU KNOW, AND HOW THEY DO IT AND HOW  
24 THEY MAKE IT AND ALL THIS OTHER STUFF. I'VE PROVED,  
25 OBVIOUSLY, THAT THEY HAVE SOLD IT, BUT I MEAN, I JUST

1       WANT TO -- IF WE CAN AGREE THAT IT IS BASICALLY IN  
2       BEFORE I REST, I DON'T THINK THE JURY EVEN NEEDS TO BE  
3       BOTHERED WITH IT.

4               THE COURT: IT IS TIME FOR THE AFTERNOON RECESS.  
5       WHY DON'T I SEND THE JURY OUT NOW, YOU CAN EXPLAIN THIS  
6       TO ME A LITTLE MORE FULLY AS TO WHAT YOU ARE DOING.  
7       THEN YOU CAN REST, I'LL GIVE YOU A CHANCE TO REST AGAIN  
8       WHEN THE JURY RETURNS.

9               AND YOU'RE MAKING A MOTION, YOU SAID? YOU HAVE  
10      A MOTION?

11              MR. SCHERKENBACH: I'M ACTUALLY NOT GOING TO  
12      MAKE RULE 50 MOTIONS AT THIS TIME.

13              THE COURT: SO WE CAN SORT THIS OUT AT THE  
14      RECESS, THEN, AS TO WHAT IT IS YOU'RE AGREEING TO,  
15      THERE'S NO NEED TO HOLD THE JURY UP.

16              MR. HAYES: OKAY, THANKS, JUDGE.

17              (END OF BENCH CONFERENCE)

18              THE COURT: OKAY, WE'LL TAKE OUR AFTERNOON  
19      RECESS. MEMBERS OF THE JURY MAY RETURN TO THE JURY  
20      ROOM.

21              (JURY EXCUSED)

22              THE COURT: PLEASE BE SEATED, LADIES AND  
23      GENTLEMEN.

24              NOW, MR. HAYES AND MR. SCHERKENBACH, WHAT IS THE  
25      NATURE OF THE STIPULATION THAT YOU WANT TO ENTER?

1           MR. SCHERKENBACH: SO TO CONTINUE THE  
2 DISCUSSION, YOUR HONOR, WHAT WE WOULD STIPULATE TO IS  
3 TO ENTER INTO THE RECORD THE AGREED DESIGNATIONS AND  
4 COUNTER-DESIGNATIONS FOR THREE WITNESSES, MR. AHEARN,  
5 A-H-E-A-R-N, MR. GOLDMAN, AND MR. SENF, S-E-N-F. THOSE  
6 DESIGNATIONS RELATE PRIMARILY TO LIABILITY FOR FOREIGN  
7 SALES, WHICH GIVEN YOUR HONOR'S CURRENT VIEW ON THE  
8 SECTION 271(F) ISSUE, I DON'T BELIEVE IS AN ISSUE THAT  
9 WE'RE GOING TO BE ASKING THE JURY TO DECIDE ON THE  
10 VERDICT FORM; HOWEVER, THE TESTIMONY IN THESE  
11 DEPOSITION TRANSCRIPTS, I THINK BOTH SIDES AGREE, WOULD  
12 BE RELEVANT TO THE CONSIDERATION OF THE ISSUE ON  
13 APPEAL, AND IN PARTICULAR, IF THE APPELLATE COURT WERE  
14 TO SEE THE STATUTE IN A DIFFERENT WAY.

15           THE COURT: YOU HAVE SOME DESIGNATIONS THAT YOU  
16 WISH TO OFFER AS FULL EXHIBITS, IS THAT RIGHT?

17           MR. HAYES: YES, SIR.

18           THE COURT: BUT YOU'RE SAYING THAT THESE SHOULD  
19 NOT BE READ TO THE JURY OR THE JURY SHOULD NOT BE  
20 INFORMED?

21           MR. HAYES: RIGHT. IT IS JUST GOING TO BORE  
22 THEM TO DEATH, AND IT IS NOT A QUESTION THAT THEY ARE  
23 GOING TO BE RESOLVED ABOUT ANYWAY.

24           THE COURT: OKAY.

25           MR. HAYES: IT'S UP TO YOU.



1           THE COURT: I'M TRYING TO UNDERSTAND HERE WHAT  
2           ROLE THESE TRANSCRIPTS WOULD PLAY IN THIS PHASE OF THE  
3           TRIAL.

4           MR. HAYES: IN THIS PHASE OF THE TRIAL WE HAVE  
5           TO PROVE THAT -- WE BELIEVED WE HAVE PROVED  
6           INFRINGEMENT, BUT YOU HAVE TO PROVE THE ELEMENTS OF  
7           THAT 271(F), NAMELY THEY SEND IT OVER TO JAPAN, THEY  
8           HOOK IT UP WITH THE DISC, AND THEN POP, OFF IT GOES.  
9           WE GOT SOME OF THAT, OBVIOUSLY IN A BROAD-BRUSH SENSE,  
10          SO TO SPEAK, FROM MR. KLAUSNER, WHO EXPLAINED HOW IT  
11          WORKED. HOWEVER, THIS IS THE DETAILED STUFF AS TO HOW  
12          IT, YOU KNOW, WHAT THEY DO.

13          AND FRANK HAS, AND HIS POSITION ON APPEAL, I'M  
14          SURE WILL BE, ALL THE MINUTIAE OF WHAT THEY DO IN JAPAN  
15          TO BASICALLY TAKE THE GOLDEN DISC AND MAKE IT INTO  
16          ANOTHER DISC, ARGUING THAT IT IS NOT A COMPONENT UNDER  
17          THE STATUTE. WE HAVE ALREADY BRIEFED THAT ISSUE. NONE  
18          OF THAT IS GOING TO BE RELEVANT FOR THE JURY'S  
19          DETERMINATION IN THIS TRIAL, BUT IT IS RELEVANT ON THE  
20          ISSUE OF APPEAL. SO WE JUST WANT TO -- I CAN'T REST --  
21          IF I REST AND SAID, BOOM, I REST, HE COULD JUST JUMP UP  
22          AND SAY I DIDN'T PUT ANY EVIDENCE ON, AND THEN I WOULD  
23          NEVER GET TO APPEAL ON THE ISSUE. SO THAT'S THE  
24          PROPOSAL.

25          THE COURT: WELL, MAYBE I'LL SEE COUNSEL IN

1 CHAMBERS HERE AND WE CAN TALK A LITTLE MORE ABOUT THIS  
2 SO I CAN BETTER UNDERSTAND EXACTLY WHAT IT IS YOU'RE  
3 TRYING TO DO. WE'LL TAKE OUR AFTERNOON RECESS AND I'LL  
4 SEE COUNSEL IN CHAMBERS.

5 (COUNSEL IN CHAMBERS).

6 (AFTERNOON RECESS 3:25 TO 3:51 P.M.).

7 MR. HAYES: JUDGE, BEFORE WE BRING THE JURY IN,  
8 WE'VE AGREED TO THE STIPULATION AND WE WOULD JUST LIKE  
9 TO ENTER IT, IF THAT'S OKAY WITH YOU?

10 THE COURT: BEFORE WE BRING THE JURY IN?

11 MR. HAYES: YES.

12 THE COURT: WELL, AREN'T YOU GOING TO READ IT TO  
13 THE JURY?

14 MR. HAYES: FINE, IF YOU WANT, THAT'S FINE WITH  
15 ME.

16 THE COURT: IS THIS THE STIPULATION THAT WOULD  
17 GO TO THE JURY OR NOT?

18 MR. SCHERKENBACH: NO.

19 MR. HAYES: NO, OKAY.

20 THE COURT: ALL RIGHT. SO YOU JUST WANT TO PUT  
21 THIS STIPULATION ON THE RECORD OUTSIDE OF THE PRESENCE  
22 OF THE JURY?

23 MR. HAYES: RIGHT, THIS IS WHAT WE TALKED ABOUT  
24 ON THE USE OF THE THING. SO DO I JUST READ IT?

25 THE COURT: WELL, DO YOU WANT TO PUT IT IN

1 EVIDENCE?

2 MR. HAYES: I CAN READ IT AND PUT IT IN  
3 EVIDENCE.

4 THE COURT: ALL RIGHT. GO AHEAD.

5 MR. HAYES: "MICROSOFT AND SOME OF ITS  
6 CUSTOMERS, BOTH U.S. AND FOREIGN, USE THE ACCUSED  
7 PRODUCTS AND THE SMART TAGS TECHNOLOGY INCORPORATED  
8 THEREIN, INCLUDING OUT OF THE BOX AND CUSTOM/EXTENSIBLE  
9 SMART TAGS.

10 MICROSOFT WITH KNOWLEDGE OF U.S. PATENT 623853B1  
11 ACTIVELY INDUCES ITS CUSTOMERS, BOTH U.S. AND FOREIGN,  
12 TO USE THE ACCUSED PRODUCTS AND THE SMART TAG  
13 TECHNOLOGY INCORPORATED THEREIN, INCLUDING OUT OF THE  
14 BOX AND CUSTOM/EXTENSIBLE SMART TAGS."

15 MAY I APPROACH?

16 THE COURT: YES.

17 MR. HAYES: I GUESS WE CAN MARK IT AS AN  
18 EXHIBIT.

19 THE COURT: WHAT EXHIBIT WOULD THIS BE?

20 THE CLERK: 374.

21 THE COURT: THIS WOULD BE 374. AND COUNSEL  
22 AGREE THIS IS NOT AN EXHIBIT THAT WOULD GO TO THE JURY?

23 MR. SCHERKENBACH: CORRECT, IT SHOULD NOT GO TO  
24 THE JURY.

25 MR. HAYES: I AGREE WITH THAT, JUDGE.

1 THE COURT: MADAM CLERK, WOULD YOU MAKE A NOTE  
2 OF THAT, PLEASE.

3 (PLAINTIFF'S EXHIBIT 374 ADMITTED IN FULL)

4 MR. HAYES: AND FOR THE RECORD WE JUST OFFER  
5 EXHIBIT 374.

6 THE COURT: I THINK I JUST ADMITTED IT.

7 MR. SCHERKENBACH: NO OBJECTION.

8 MR. HAYES: THANKS, JUDGE.

9 THE COURT: NOW, THE OTHER MATTER JUST TO MAKE  
10 SURE THERE IS NO MISUNDERSTANDING ON THE OTHER MATTER  
11 WE DISCUSSED, AS I UNDERSTAND IT, COUNSEL AGREE THAT  
12 THE QUESTION OF THE GOLDEN MASTERS, WHETHER THAT  
13 CREATES A LIABILITY FOR FOREIGN DAMAGES IS A QUESTION  
14 THAT WILL BE ADDRESSED AT THE DAMAGES STAGE, IF WE GET  
15 TO DAMAGES; IS THAT CORRECT?

16 MR. HAYES: ON 271(F), RIGHT.

17 THE COURT: STATUTORY SECTION 271(F).

18 MR. SCHERKENBACH: CORRECT, YOUR HONOR.

19 THE COURT: OKAY. WOULD YOU BRING THE JURY IN,  
20 PLEASE.

21 MR. HAYES: CAN MR. KLAUSNER HAVE PERMISSION TO  
22 TAKE NOTES? HE'S OUR EXPERT.

23 THE COURT: YES.

24 MR. HAYES: THANK YOU, JUDGE.

25 (JURY PRESENT)

1 THE COURT: PLEASE BE SEATED, LADIES AND  
2 GENTLEMEN.

3 MR. HAYES: THE PLAINTIFF RESTS, YOUR HONOR.

4 THE COURT: THE PLAINTIFF HAS RESTED, AND AS I  
5 TOLD YOU EARLIER, THAT MEANS THAT THE PLAINTIFF HAS  
6 PRESENTED ALL OF ITS EVIDENCE NOW AND IT IS THE  
7 DEFENDANT'S TURN. MR. SCHERKENBACH?

8 MR. SCHERKENBACH: THANK YOU, YOUR HONOR.

9 YOUR HONOR, MICROSOFT CALLS AS ITS FIRST  
10 WITNESS, MR. JEFF REYNAR.

11 DEFENDANT'S WITNESS, JEFF REYNAR SWORN

12 THE CLERK: STATE AND SPELL YOUR NAME.

13 THE WITNESS: JEFF REYNAR, J-E-F-F, LAST NAME,  
14 R-E-Y-N-A-R.

15 DIRECT EXAMINATION

16 BY MR. SCHERKENBACH:

17 Q. GOOD AFTERNOON, MR. REYNAR.

18 A. GOOD AFTERNOON.

19 Q. WOULD YOU PLEASE INTRODUCE YOURSELF TO THE JURY.

20 A. CERTAINLY. MY NAME IS JEFF REYNAR, I LIVE IN NEW  
21 YORK CITY, AND I USED TO WORK FOR MICROSOFT FOR ABOUT  
22 FIVE YEARS.

23 Q. WHAT IS YOUR EDUCATIONAL BACKGROUND, MR. REYNAR?

24 A. I HAVE A PH.D. IN COMPUTER SCIENCE FROM THE  
25 UNIVERSITY OF PENNSYLVANIA AND UNDERGRADUATE DEGREES IN

1 PSYCHOLOGY AND COMPUTER SCIENCE FROM THE UNIVERSITY OF  
2 DELAWARE.

3 Q. DID YOU HAVE ANY SPECIALTY IN COMPUTER SCIENCE?

4 A. YES, I DID.

5 Q. WHAT WAS IT?

6 A. IT WAS THE NATURAL LANGUAGE PROCESSING.

7 Q. WHAT IS NATURAL LANGUAGE PROCESSING?

8 A. IT'S A TYPE OF ARTIFICIAL INTELLIGENCE RELATED TO  
9 ANALYZING TEXT AND SPEECH IN ORDER TO MAKE IT EASIER  
10 FOR PEOPLE TO USE COMPUTERS.

11 Q. AND DID YOUR PH.D. WORK FOCUS ON A PARTICULAR  
12 ASPECT OF NATURAL LANGUAGE PROCESSING?

13 A. YES, IT DID.

14 Q. WHAT WAS YOUR FOCUS?

15 A. MY DISSERTATION WAS ABOUT FINDING PLACES WHERE THE  
16 TOPIC CHANGED IN TEXT AND SPEECH, SO IF YOU WERE  
17 LISTENING TO THE RADIO YOU MIGHT HEAR ONE STORY A  
18 BROADCASTER WAS PRESENTING ABOUT A BASEBALL GAME AND  
19 THEY MIGHT STOP TALKING ABOUT THE BASEBALL GAME AND  
20 INSTEAD START TALKING ABOUT POLITICS, AND I BUILD  
21 PROGRAMS TO TRY TO FIND WHERE THAT TRANSITION TOOK  
22 PLACE.

23 Q. WHEN DID YOU FINISH YOUR PH.D.?

24 A. IN MAY OF 1998.

25 Q. WHAT DID YOU DO NEXT?

1       A.   I JOINED MICROSOFT AS A PROGRAM MANAGER.

2       Q.   WAS MICROSOFT YOUR FIRST JOB, THEN, AFTER SCHOOL?

3       A.   YES, IT WAS.

4       Q.   WHEN WERE YOU HIRED BY MICROSOFT?

5       A.   I WAS HIRED IN MAY OF 1998.

6       Q.   WHY DID YOU WANT TO WORK FOR MICROSOFT?

7       A.   I WAS EXCITED ABOUT THEIR PROSPECT OF TAKING

8       TECHNOLOGY I HAD WORKED ON AS A GRADUATE STUDENT IN THE

9       RESEARCH AREA OF NATURAL LANGUAGE PROCESSING, AND

10      INCORPORATING IT INTO A WIDELY-USED PRODUCT LIKE WORD.

11      Q.   AND WHAT IS YOUR UNDERSTANDING OF WHY MICROSOFT

12      WANTED TO HIRE YOU?

13             MR. HAYES:  OBJECTION.

14             THE COURT:  SUSTAINED.

15      Q.   AFTER COMING TO MICROSOFT, DID YOU THINK OF ANY NEW

16      IDEAS FOR MICROSOFT PRODUCTS?

17      A.   YES, I DID.  I WORKED ON SPEECH RECOGNITION AND

18      SMART TAGS AND IMPROVING THE SPELLING AND GRAMMAR

19      CHECKER AND SOME OTHER THINGS IN WORD AS WELL.

20      Q.   HOW LONG DID YOU WORK IN MICROSOFT?

21      A.   I WAS THERE FOR ABOUT FIVE YEARS.

22      Q.   DID YOU WORK ON SMART TAGS THROUGHOUT YOUR TIME AT

23      MICROSOFT?

24      A.   YES, I DID.

25      Q.   IS THERE ANYONE AT MICROSOFT MORE KNOWLEDGEABLE

1       THAN YOU ABOUT SMART TAGS?

2               MR. HAYES:  OBJECTION.

3               THE COURT:  OVERRULED.  AT THE RISK OF BEING  
4       IMMODEST, YOU MAY ANSWER THAT QUESTION.

5       A.  NO, I DON'T THINK SO.

6       Q.  WHEN DID YOU LEAVE MICROSOFT?

7       A.  I LEFT IN MAY OF 2003.

8       Q.  WHY?

9       A.  I WANTED TO MOVE BACK TO THE EAST COAST.

10      Q.  AND WHAT ARE YOU DOING NOW?

11      A.  I WORK FOR A COMPANY CALLED GOOGLE IN NEW YORK.

12      Q.  AND WHAT DOES GOOGLE DO?

13      A.  THEY MAKE THE WORLD'S MOST POPULAR SEARCH ENGINE.

14      Q.  DO YOU HAVE ANY STAKE IN THE OUTCOME OF THIS CASE?

15      A.  NO, I DON'T.

16      Q.  ARE YOU BEING COMPENSATED FOR YOUR TIME SPENT HERE?

17      A.  YES, I AM.

18      Q.  AT WHAT RATE?

19      A.  TWO HUNDRED DOLLARS AN HOUR.

20      Q.  WHAT'S YOUR UNDERSTANDING OF WHY YOU'RE BEING  
21      COMPENSATED FOR YOUR TIME?

22      A.  WELL, JUST FOR MY WORK IN THIS MATTER.  I SHOULD BE  
23      AT MY DAY JOB AT GOOGLE RIGHT NOW AND I'M HERE.

24      Q.  OKAY.  WHAT ARE SMART TAG?

25      A.  SMART TAGS REFERS TO A FEW DIFFERENT THINGS, A FEW



1 FEATURES THAT WERE INTRODUCED IN OFFICE XP.

2 Q. AND WHAT ARE THE TYPES OF FEATURES THAT ARE  
3 DESCRIBED BY THE SMART TAGS LABEL?

4 A. THERE ARE THREE OF THEM REALLY. THERE'S OUT OF THE  
5 BOX SMART TAGS, WHICH SHIP AS PART OF MICROSOFT OFFICE  
6 XP; THERE ARE THIRD-PARTY OR CUSTOM SMART TAGS, ONES  
7 THAT PEOPLE OTHER THAN MICROSOFT CAN BUILD; AND THERE  
8 ARE THOSE THAT RELATE TO KEEPING THE USER IN CONTROL OF  
9 WORD OR EXCEL, PRIMARILY AROUND FORMATTING.

10 Q. LET'S TALK ABOUT THE FIRST TYPE, THE OUT OF THE BOX  
11 TYPE. WHAT ARE THEY?

12 A. THE OUT OF THE BOX SMART TAGS ARE SMART TAGS THAT  
13 RECOGNIZE CERTAIN STRINGS, THINGS LIKE DATES, TIMES,  
14 TELEPHONE NUMBERS, PEOPLE'S NAMES. MUCH OF THAT  
15 RECOGNITION IS DONE BY THE GRAMMAR CHECKER. AND THE  
16 REASON IT'S DONE IS SO THAT THOSE STRINGS CAN BE KIND  
17 OF INTEGRATED WITH OUTLOOK AND WEB PROPERTIES THROUGH  
18 COMPONENTS THROUGH ACTIONS.

19 Q. AND CAN YOU BRIEFLY EXPLAIN HOW OUT OF THE BOX  
20 SMART TAGS WORK?

21 A. SURE. WHILE THE USER IS TYPING, THE GRAMMAR  
22 CHECKER AND ANOTHER COMPONENT WATCH THE TEXT THE USER  
23 ENTERS AND LOOKS FOR PARTICULAR STRINGS. IF YOU TYPE  
24 MAY 14, 2004, HOPEFULLY THE GRAMMAR CHECKER WOULD  
25 NOTICE THAT THAT WAS A DATE AND APPLY DATE SMART TAG TO

1 IT.

2 Q. CAN YOU DEMONSTRATE FOR US HOW OUT OF THE BOX SMART  
3 TAGS WORK?

4 A. SURE, I CAN.

5 MR. SCHERKENBACH: YOUR HONOR, WITH YOUR  
6 PERMISSION, MR. REYNAR WILL SHOW A PIECE OF THE ACCUSED  
7 PRODUCT.

8 THE COURT: ALL RIGHT.

9 Q. AND IF YOU COULD, MR. REYNAR, JUST DESCRIBE EACH  
10 STEP ONE AT A TIME AS YOU TAKE IT, TO ACTUALLY  
11 DEMONSTRATE SMART TAGS?

12 A. I CERTAINLY WILL. IT IS ON THE SCREEN FOR  
13 EVERYONE, RIGHT?

14 SO THE FIRST THING I AM GOING TO DO IS BOOT  
15 MICROSOFT WORD. SO HERE WE ARE, THIS IS THE VERSION OF  
16 MICROSOFT WORD THAT SHIPS WITH OFFICE XP. AND NOW,  
17 DEPENDING ON WHICH SMART TAGS I WANTED TO USE, I MIGHT  
18 HAVE TO GO AND TURN THEM ON, SINCE NOT ALL OF THEM ARE  
19 ON BY DEFAULT.

20 Q. SO JUST BEFORE YOU DO THAT, WHAT ARE WE LOOKING AT  
21 NOW ON THE SCREEN?

22 A. THIS IS JUST THE MICROSOFT WORD 2002 APPLICATION  
23 THAT SHIPPED AS PART OF OFFICE XP.

24 Q. SO IT IS A BLANK WORD PROCESSOR DOCUMENT?

25 A. JUST A BLANK DOCUMENT, YES.

1 Q. SO WHAT'S THE FIRST STEP YOU NEED TO TAKE IN ORDER  
2 TO USE, SAY, A PERSON NAME SMART TAG?

3 A. WELL, THE PERSON NAME IS ONE OF THE ONES THAT'S  
4 OFF, SO I'D HAVE TO GO TURN IT ON. AND THE WAY I DO  
5 THAT IS BY GOING TO THE CUSTOMIZATION DIALOGUE FOR  
6 SMART TAGS.

7 Q. CAN YOU SHOW US HOW YOU DO THAT AND, PLEASE, FOR  
8 THE RECORD, TALK THROUGH EACH STEP YOU TAKE.

9 A. SURE. SO I MOVE THE MOUSE OVER THE TOP OF THE  
10 TOOLS MENU AND CLICK ON THAT, THE MENU WOULD OPEN.  
11 DOWN TOWARDS THE BOTTOM OF THE MENU THERE'S AN ITEM  
12 CALLED "AUTO-CORRECT OPTIONS," AND IF I CLICK ON THAT,  
13 "DIALOGUE" COMES UP. THERE ARE A NUMBER OF THINGS YOU  
14 CAN DO ON THIS DIALOGUE.

15 Q. CAN YOU STOP FOR A MINUTE. WHAT IS A DIALOGUE?

16 A. OH, IT'S JUST AN ELEMENT OF USER INTERFACE. THIS  
17 IS A DIALOGUE BOX THAT APPEARS IN FRONT OF THE WORD  
18 DOCUMENT RIGHT NOW.

19 Q. OKAY. CONTINUE.

20 A. SO SINCE THERE ARE A NUMBER OF DIFFERENT THINGS I  
21 CAN DO, THEY ARE GROUPED BY TABS, AND ONE OF THE TABS  
22 IS LABELED "SMART TAGS." IF I CLICK ON THAT TAB, THEN  
23 I SEE ALL OF THE OPTIONS ON THIS DIALOGUE RELATED TO  
24 CUSTOMIZING SMART TAGS.

25 Q. SO WHAT ARE WE LOOKING AT NOW ON THE SMART TAGS

1       TAB?

2       A.  A FEW THINGS, REALLY.  THERE'S AN OPTION TO TURN  
3       OFF RECOGNITION COMPLETELY.  THAT'S THE LABELED TEXT  
4       WITH SMART TAGS, CHECK BOX.  BELOW THAT IS A LIST OF  
5       THE RECOGNIZER COMPONENTS THAT SHIP WITH OFFICE XP AND  
6       ALSO THE ONE THAT MR. KLAUSNER BUILT AS WELL.

7       Q.  NOW, WHAT DO THE CHECK BOXES OR THE CHECK MARKS IN  
8       THE BOXES TO THE LEFT OF EACH OF THESE SMART TAGS TYPE  
9       MEAN?

10      A.  IF A PARTICULAR SMART TAG TYPE LIKE THE ONE THAT'S  
11      SELECTED, "DATES" HERE, HAS A CHECK MARK -- A CHECK BOX  
12      NEXT TO IT -- A CHECK MARK NEXT TO IT RATHER, THAT  
13      MEANS THAT IT'S TURNED ON.

14      Q.  SO CAN YOU TURN THE PERSON NAME SMART TAG ON,  
15      PLEASE.

16      A.  SURE.  I'LL JUST CLICK ON THAT CHECK BOX AND NOW IT  
17      WILL BE ON WHEN I CLOSE THIS DIALOGUE BOX.

18      Q.  NOW, DOES MICROSOFT HAVE ANY IDEA HOW FREQUENTLY  
19      USERS CHANGE THE DEFAULT SETTING FOR SMART TAGS?

20             MR. HAYES:  OBJECTION.

21             THE COURT:  OVERRULED.  YOU MAY ANSWER THAT YES  
22      OR NO.  YES, IT DOES HAVE AN IDEA OR NO, IT DOESN'T.

23      A.  YES, IT DOES, GENERALLY SPEAKING, HAVE AN IDEA.

24      Q.  DO YOU HAVE AN IDEA, PERSONALLY, HOW FREQUENTLY  
25      USERS CHANGE THE DEFAULT SETTINGS FOR SMART TAGS?

1           MR. HAYES:  OBJECTION.  YOUR HONOR, HE HAS NEVER  
2       FILED AN EXPERT REPORT OR ANY OF THAT, THERE'S NO  
3       FOUNDATION FOR IT.

4           THE COURT:  OVERRULED.  YOU MAY ANSWER THAT,  
5       AGAIN, YES OR NO.

6       A.  YES.

7       Q.  AND WHAT IS THE BASIS FOR YOUR KNOWLEDGE AS TO HOW  
8       FREQUENTLY USERS CHANGE DEFAULT SETTING?

9       A.  I KNOW THAT AS SOMEONE WHO WORKED ON DESIGNING  
10      PARTS OF OFFICE, THAT GETTING THE DEFAULT SETTINGS  
11      RIGHT WAS VERY IMPORTANT BECAUSE MOST USERS DIDN'T  
12      BOTHR CHANGING THEM.

13      Q.  WERE YOU PART OF DISCUSSIONS INSIDE MICROSOFT ABOUT  
14      HOW TO SET UP THE DEFAULTS FOR SMART TAGS?

15      A.  YES, ABSOLUTELY.

16           THE COURT:  EXCUSE ME, MR. SCHERKENBACH.

17           HOW WOULD YOU KNOW WHETHER USERS DID OR DIDN'T  
18      CHANGE THEM?

19           THE WITNESS:  I KNOW GENERALLY FOR THE SETTINGS  
20      IN WORD THAT PEOPLE TYPICALLY DON'T BOTHR DOING MUCH  
21      CUSTOMIZATION.  IT IS TYPICALLY ADVANCED USERS WHO DO  
22      CUSTOMIZATION.  MOST USERS, I WOULD EXPECT NOT TO GO TO  
23      THIS DIALOGUE AT ALL.

24           MR. HAYES:  YOUR HONOR, I WOULD MOVE TO STRIKE  
25      HIS LAST RESPONSE.  THERE IS NO FOUNDATION OF SURVEYS

1 OR ANYTHING --

2 THE COURT: THE JURY WILL DISREGARD THE LAST  
3 ANSWER. WE NEED TO HAVE SOME BASIS FOR THAT STATEMENT.  
4 YOU CAN WORK ON THAT BASIS, MR. SCHERKENBACH.

5 Q. WELL, ACTUALLY, LET'S JUST MOVE ON.

6 NOW YOU CHANGED THE DEFAULT TO RECOGNIZE PERSON  
7 NAME, CAN WE JUST RETURN TO THE DOCUMENT, PLEASE.

8 A. SURE, I'LL JUST CLICK ON "OKAY" AND THAT WILL  
9 CONFIGURE THINGS THE WAY THEY WERE CHECKED.

10 Q. SO NOW WHAT'S THE NEXT THING A USER HAS TO DO TO  
11 GET TO A SMART TAG?

12 A. THEY WOULD HAVE TO TYPE SOME TEXT.

13 Q. CAN YOU DO THAT, GIVE US AN EXAMPLE, PLEASE.

14 A. SURE. I'LL JUST TYPE MY OWN NAME HERE, "DR. JEFF  
15 REYNAR."

16 Q. PERHAPS YOU COULD MAKE THE FONT A LITTLE BIGGER,  
17 DR. REYNAR, SO WE CAN SEE IT BETTER.

18 A. WHY DON'T WE JUST TURN ON ZOOM. IS THAT BETTER?

19 Q. OKAY. NOW, AFTER YOU TYPE THE NAME, WHAT HAPPENED?

20 A. AFTER I TYPED MY NAME, THE GRAMMAR CHECKER RAN AND  
21 OBSERVED THAT "DR. JEFF REYNAR" WAS A PERSON NAME, AND  
22 APPLIED A PERSON NAME SMART TAG TO IT.

23 Q. AND WHAT DOES THE DOTTED PURPLE UNDERLINE MEAN?

24 A. THE DOTTED PURPLE UNDERLINE INDICATES THAT THAT  
25 STRING IS NOT ONLY A SMART TAG, BUT THAT THERE ARE

1 ACTIONS AVAILABLE FOR THAT SMART TAG AS WELL.

2 Q. HOW DOES THE RECOGNITION PROCESS WORK IN SMART  
3 TAGS?

4 A. WELL, IN THIS CASE, IT'S THE GRAMMAR CHECKER THAT  
5 LABELED "DR. JEFF REYNAR." SO TEXT IS GIVEN TO THE  
6 GRAMMAR CHECKER, IT LOOKS AT THAT TEXT, AND IF IT FINDS  
7 SOMETHING THAT IT THINKS IS A PERSON'S NAME, IT TELLS  
8 WORD WHERE THAT PERSON'S NAME IS.

9 Q. AND HOW DO YOU KNOW AT THIS POINT IN THE PROCESS  
10 THAT THE RECOGNITION OF THE NAME HAS HAPPENED?

11 A. WELL, I KNOW HOW IT WORKS. THAT'S HOW I KNOW ABOUT  
12 THE EXPLANATION OF THE GRAMMAR CHECKER AND SO FORTH.  
13 BUT THE MAIN WAY A USER WOULD KNOW IS BY LOOKING AT THE  
14 DOCUMENT AND SEEING THE DOTTED PURPLE UNDERLINE HERE.

15 Q. WHAT HAPPENS BEHIND THE SCENES, BEHIND THE VISIBLE  
16 DOCUMENT WHEN THE TEXT IS RECOGNIZED?

17 A. WELL, WHEN THE TEXT IS RECOGNIZED, THE SMART TAG  
18 LABELS PERSON NAME, TITLE, THINGS LIKE THAT ARE  
19 ASSOCIATED WITH STRINGS IN THE DOCUMENT.

20 Q. SO WHAT INFORMATION IS AVAILABLE ABOUT THIS  
21 RECOGNIZED TEXT AT THIS POINT IN THE PROCESS?

22 A. WELL, AT THIS POINT, WORD KNOWS WHAT SMART TAG  
23 LABELS HAVE BEEN APPLIED, WHERE THE STRINGS ARE FOR  
24 EACH OF THOSE SMART TAGS. IT MIGHT ALSO KNOW SOME  
25 ADDITIONAL PROPERTIES ABOUT EACH OF THE SMART TAGS AS

1 WELL.

2 Q. DOES THE PROGRAM KNOW AT THIS POINT THAT THE

3 "DR." IS A TITLE?

4 A. YES, IT DOES.

5 Q. AND DOES THE PROGRAM KNOW AT THIS POINT THAT "JEFF"

6 IS A FIRST NAME?

7 A. YES, IT DOES.

8 Q. DOES IT KNOW THAT "REYNAR" IS A SECOND NAME?

9 A. YES, IT DOES.

10 Q. DOES THE USER HAVE TO SELECT ANY BUTTONS OR MENUS

11 OF ANY KIND TO CAUSE THE RECOGNITION TO OCCUR?

12 A. NO, IT HAPPENS AUTOMATICALLY AS THE USER TYPES.

13 Q. DID MICROSOFT MAKE A SPECIFIC DECISION TO HAVE THAT

14 RECOGNITION PROCESS OCCUR AUTOMATICALLY?

15 A. DEFINITELY.

16 Q. WHY?

17 A. WELL, THE USER'S TASK ISN'T TO CREATE SMART TAGS,

18 IT IS TO WRITE THEIR DOCUMENT. SO WE DIDN'T WANT THEM

19 TO HAVE TO DECIDE WHETHER THEY WANTED TO LOOK AT A

20 DOCUMENT FOR SMART TAGS, WE THOUGHT IT WOULD BE USEFUL

21 TO DO IT AUTOMATICALLY AND THEN GIVE THEM A CHOICE

22 ABOUT USING THEM OR NOT.

23 Q. SO NOW THAT THE TEXT HAS BEEN RECOGNIZED AS A SMART

24 TAG, WHAT HAPPENS NEXT?

25 A. NOTHING. THE USER CAN JUST CONTINUE TO WORK ON



1       THEIR DOCUMENT IF THAT'S WHAT THEY WANT TO DO.

2       Q.   COULD A USER TYPE ADDITIONAL TEXT THAT WOULD

3       CONTAIN ADDITIONAL SMART TAGS?

4       A.   CERTAINLY.

5       Q.   WHAT IF THE USER WANTS TO DO SOMETHING WITH THE

6       TEXT THAT HAS BEEN RECOGNIZED, HOW DO THEY DO THAT?

7       A.   WELL, THEY HAVE TO INDICATE, IN THIS CASE THERE IS

8       ONLY ONE SMART TAG IN THE DOCUMENT, BUT TYPICALLY,

9       THERE WOULD BE MORE THAN ONE AND THEY WOULD HAVE TO

10      TELL WORD WHICH ONE THEY WANTED TO OPERATE ON.

11      Q.   AND HOW DOES A USER TELL WORD WHICH SMART TAG THEY

12      WANT TO OPERATE ON?

13      A.   THEY CAN EITHER HOVER THEIR MOUSE OVER IT OR PLACE

14      THEIR CURSOR IN IT.

15      Q.   CAN YOU SHOW US THAT, PLEASE.

16      A.   SURE.  THERE I AM, HOVERING MY MOUSE OVER THE

17      STRING AND YOU CAN SEE THAT THAT LITTLE BUTTON WITH THE

18      "I" APPEARS.  THE OTHER POSSIBILITY IS I CAN MOVE MY

19      CURSOR INTO IT AND THE SAME THING HAPPENS.

20      Q.   NOW, THE SECOND WAY THAT YOU MOVED THE CURSOR INTO

21      THE NAME, YOU DID THAT USING THE KEYBOARD ON THE

22      COMPUTER; IS THAT RIGHT?

23      A.   I DID.  I JUST USED THE ARROW KEYS.

24      Q.   BUT WHETHER YOU USE THE MOUSE OR THE KEYBOARD, THE

25      CURSOR HAS TO BE OVER THE NAME; IS THAT RIGHT?

1     A.   YES.   EITHER THE CURSOR HAS TO BE WITHIN THE  
2     CONFINES OF THE NAME OR THE MOUSE POINTER HAS TO BE  
3     HOVERING ABOVE IT.

4     Q.   NOW THAT WE HAVE THE CURSOR OVER THE NAME AND THE  
5     BUTTON HAS POPPED UP, WHAT DOES THE USER HAVE TO DO  
6     NEXT TO GET TO AN ACTION FOR A SMART TAG?

7     A.   THEY WOULD HAVE TO CLICK ON THE BUTTON IN ORDER TO  
8     REVEAL A MENU THAT CONTAINED A LIST OF ACTIONS.

9     Q.   CAN YOU SHOW US THAT?

10    A.   SURE.

11    Q.   IF WE JUST STOP THERE AFTER YOU'VE CLICKED ON THE  
12    BUTTON, WHAT HAPPENED?

13    A.   CLICKING ON THE BUTTON OR USING A SHORTCUT KEY ON  
14    THE KEYBOARD OPENED THE MENU, AND THAT'S WHERE WE ARE.

15    Q.   AND THEN WHAT DOES THE USER HAVE TO DO FINALLY TO  
16    SELECT ONE OF THE ACTIONS FOR THE SMART TAG?

17    A.   THEY COULD DO IT EITHER USING THEIR MOUSE, BY  
18    MOVING THE MOUSE DOWN OVER THE ACTION THEY WANT AND  
19    CLICKING, OR THEY COULD DO IT WITH THE KEYBOARD.

20    Q.   WHY DID YOU REQUIRE THE USER TO TAKE THESE STEPS TO  
21    GET FROM THE RECOGNIZED TEXT TO AN ACTION FOR THAT  
22    RECOGNIZED TEXT?

23    A.   WELL, WE WOULDN'T WANT TO ASSUME THAT FOR EVERY  
24    SMART TAG IN THE DOCUMENT THE USER WOULD WANT SOMETHING  
25    TO HAPPEN.   THEIR MAIN TASK IS WRITING THEIR DOCUMENT,

1       AND ONE OF THE THEMES FOR OFFICE XP WAS KEEPING THE  
2       USER IN CONTROL.  AND DOING THINGS AUTOMATICALLY WHEN  
3       WE ARE NOT VERY CERTAIN THAT THEY'RE WHAT THE USER  
4       WANTS DONE WOULD REALLY VIOLATE THAT GOAL, THEY  
5       WOULDN'T BE IN CONTROL AT THAT POINT IN TIME.

6       Q.  DID YOU EVER CONSIDER PROVIDING AUTOMATIC ACTIONS  
7       FOR ANY KIND OF SMART TAG?

8       A.  NO, WE DIDN'T.

9       Q.  DIRECTING YOUR ATTENTION BACK TO THE BUTTON THERE,  
10       WHAT IS THE PURPOSE OF THAT BUTTON IN THE SMART TAGS  
11       TECHNOLOGY?

12       A.  THE PRIMARY PURPOSE IS TO PROVIDE A WAY FOR THE  
13       USER TO GAIN ACCESS TO THIS MENU WITH A LIST OF ACTIONS  
14       AND OTHER THINGS THAT ARE AVAILABLE FROM THE MENU, BUT  
15       IT ALSO SERVES TO SHOW WHICH SMART TAG YOU COULD  
16       OPERATE ON IF YOU CLICKED THE BUTTON.

17       Q.  AND WHERE DOES IT SHOW THAT?

18       A.  WELL, IT JUST SHOWS THAT BECAUSE OF ITS PROXIMITY  
19       TO THIS STRING THERE.  IF THERE WERE OTHER SMART TAGS  
20       IN THE DOCUMENT, THE BUTTON WOULD APPEAR RIGHT NEXT TO  
21       THE ONE THAT YOU EITHER PLACED YOUR CURSOR IN OR  
22       HOVERED OVER THE TOP OF.

23       Q.  HOW DOES A USER -- STRIKE THAT.  WHAT HAPPENS WHEN  
24       A USER SELECTS AN ACTION FROM THE MENU?

25       A.  WHEN A USER SELECTS AN ACTION, THE CODE FOR THAT

1 ACTION IS EXECUTED.

2 Q. DO ANY OF THE ACTIONS FOR PERSON NAME REQUIRE THE  
3 PROGRAM TO ANALYZE THE DOCUMENT AGAIN TO FIND OUT IF  
4 THE PERSON'S NAME IS THERE?

5 A. NO, THEY DON'T. YOU WOULDN'T BE ABLE TO GET TO THE  
6 MENU AND SEE ACTIONS FOR PERSON NAME IF THERE WASN'T A  
7 PERSON NAME THERE THAT HAD BEEN LABELED AS A PERSON  
8 SMART TAG ALREADY.

9 Q. SO, FOR EXAMPLE, IF YOU SELECTED "INSERT ADDRESS,"  
10 IS THERE ANY FURTHER ANALYSIS IN THE DOCUMENT TO  
11 DETERMINE IF THE NAME IS CONTAINED IN THE DOCUMENT?

12 A. NO, THERE ISN'T.

13 Q. WERE YOU IN THE COURTROOM LAST -- WELL, TODAY AND  
14 LAST THURSDAY WHEN MR. KLAUSNER TESTIFIED?

15 A. YES, I WAS.

16 Q. DID YOU HEAR HIM SAY THAT IN HIS OPINION ANALYSIS  
17 DOES OCCUR AFTER THE USER SELECTS AN ACTION FROM THE  
18 MENU IN SMART TAGS?

19 A. YES, I DID.

20 Q. IS THAT ACCURATE?

21 A. NO, I DISAGREE WITH THAT.

22 MR. HAYES: OBJECTION, HE'S NOT -- HE HAS NEVER  
23 SUBMITTED AN EXPERT REPORT AND NOW HE'S TRYING TO  
24 RENDER AN OPINION.

25 THE COURT: OVERRULED.

1 Q. LET ME REPEAT THE QUESTION. IS THAT ACCURATE?

2 A. NO, I DISAGREE WITH THAT.

3 Q. HOW DO YOU KNOW THERE IS NO FURTHER ANALYSIS IN THE

4 DOCUMENT AFTER A USER SELECTS AN ACTION FROM A MENU?

5 A. I KNOW BECAUSE WE DESIGNED THE FEATURE NOT TO

6 REQUIRE THAT IN THE FIRST PLACE, BUT I ALSO KNOW

7 BECAUSE I'VE REVIEWED THE SOURCE CODE RECENTLY.

8 Q. LET'S TALK ABOUT A FEW OF MR. KLAUSNER'S EXAMPLES.

9 DO YOU RECALL THE EXAMPLE OF A NAME BEING TYPED IN A

10 DOCUMENT AND THEN A DATE BEING TYPED ON ANOTHER LINE

11 AND A TIME BEING TYPED IN A THIRD LINE; DO YOU RECALL

12 THAT EXAMPLE?

13 A. YES, I DO.

14 Q. CAN YOU DEMONSTRATE THAT, PLEASE, ON YOUR COMPUTER

15 THERE.

16 A. SURE. I'M JUST TYPING A DATE HERE AND IT'S BEEN

17 LABELED AS SMART TAG AND THE DOTTED PURPLE UNDERLINE

18 HAS APPEARED BENEATH IT, AND ON THE THIRD LINE I'VE

19 TYPED A TIME.

20 Q. NOW, AGAIN, WHAT DO THE DOTTED PURPLE UNDERLINES

21 INDICATE UNDER THE NAME AND THE DATE?

22 A. THEY INDICATE THAT THAT TEXT IS A SMART TAG AND

23 THEY ALSO INDICATE THAT THERE ARE ACTIONS FOR THAT

24 PARTICULAR SMART TAG.

25 Q. NOW, THERE'S NO DOTTED UNDERLINE UNDER THE TIME;

1 CORRECT?

2 A. THAT'S RIGHT.

3 Q. WHY?

4 A. IT'S BEEN LABELED AS A SMART TAG, BUT THERE ARE NO

5 ACTIONS FOR TIME SMART TAGS, SO WE DON'T DRAW THE

6 DOTTED PURPLE UNDERLINE.

7 Q. SO ARE THERE RECOGNIZED SMART TAGS THAT DON'T GET

8 UNDERLINED?

9 A. YES, THERE ARE.

10 Q. AND WHY DON'T YOU UNDERLINE THE TIME IF IT'S BEEN

11 RECOGNIZED ALREADY AS A SMART TAG?

12 A. IT JUST WOULDN'T BE OF MUCH USE TO THE USER. WE

13 DIDN'T WANT TO CLUTTER THE DOCUMENT WITH A LOTS OF

14 DOTTED PURPLE UNDERLINES UNLESS THERE WAS SOMETHING THE

15 USER COULD ACTUALLY DO WITH THAT SMART TAG. AND IN THE

16 CASE OF TIME, THERE ARE NO ACTIONS FOR TIME SO THERE

17 WAS NO REASON TO DRAW A DOTTED PURPLE UNDERLINE AND,

18 YOU KNOW, POTENTIALLY HAVE THE USER DROP A MENU THAT

19 DIDN'T HAVE ANY ACTIONS ON IT.

20 Q. WELL, IF YOU DON'T OFFER ACTIONS FOR THE TIME AND

21 THE TIME DOESN'T GET UNDERLINED, WHY BOTHER TO ANALYZE

22 THE DOCUMENT AND FIND OUT IF IT'S THERE?

23 A. THE GRAMMAR CHECKER DOES THIS ANALYSIS BECAUSE

24 TIME, ALTHOUGH IT DOESN'T HAVE ANY ACTIONS ITSELF, CAN

25 BE USED BY OTHER SMART TAG ACTIONS IF IT'S IN THE

1 DOCUMENT AND HAS BEEN LABELED AS A SMART TAG.

2 Q. NOW, OTHER THAN THE PURPLE DOTTED UNDERLINE FOR  
3 CERTAIN SMART TAGS, HOW DO YOU KNOW THAT EVERYTHING YOU  
4 HAVE ON THE SCREEN HERE, SO THE NAME, THE DATE, AND THE  
5 TIME HAS, IN FACT, BEEN RECOGNIZED AS A SMART TAG?

6 A. WELL, I BELIEVE THAT'S THE WAY IT WORKS BECAUSE OF  
7 MY EXPERIENCE DESIGNING THE PRODUCT, BUT THERE IS A WAY  
8 TO CHECK THIS BY LOOKING AT THE HTML FOR THE DOCUMENT.

9 Q. BEFORE WE DO THAT, WHAT IS HTML?

10 A. HTML IS HYPER-TEXT MARKUP LANGUAGE, IT IS THE  
11 LANGUAGE OF THE WORLD WIDE WEB.

12 Q. AND HOW DOES HTML RELATE TO WHAT A USER SEES WHEN  
13 THEY LOOK AT A MICROSOFT WORD DOCUMENT?

14 A. WELL, IT'S A -- WHAT THE USER SEES WHEN THEY'RE  
15 LOOKING AT THE DOCUMENT, ALL OF THE PRESENTATION  
16 INFORMATION, THE FONTS, THE FONT SIZE, THE PRESENCE OF  
17 SMART TAGS, ALL OF THAT CAN BE SAVED IN HTML. AND SO  
18 IF WE LOOK AT THE HTML, WE CAN SEE WHERE THE SMART TAGS  
19 ARE IN THE HTML FOR THIS DOCUMENT.

20 Q. SO CAN WE LOOK AT THE, WHAT YOU'RE CALLING THE HTML  
21 SOURCE FOR THIS DOCUMENT?

22 A. SURE.

23 Q. WOULD YOU SHOW US HOW TO DO THAT AND AGAIN, PLEASE,  
24 SO THE RECORD IS CLEAR, IDENTIFY EACH STEP YOU ARE  
25 TAKING TO GO GET TO THAT SOURCE.

1     A.  ALL RIGHT.  THE FIRST THING I'D DO IS OPEN THE FILE  
2     MENU AND ABOUT MIDWAY DOWN, THERE'S AN ITEM CALLED "WEB  
3     PAGE PREVIEW," AND IF I CLICK ON "WEB PAGE PREVIEW,"  
4     THIS WILL OPEN WEB BROWSER AND --

5     Q.  LET ME STOP YOU THERE.  WEB BROWSER, WHAT'S THAT?

6     A.  INTERNET EXPLORER, THE PROGRAM THAT PEOPLE USE TO  
7     LOOK AT HTML DOCUMENTS, SEARCH THE WEB.

8     Q.  CONTINUE, WHAT DO WE DO NOW?

9     A.  SO HERE WE ARE LOOKING AT INTERNET EXPLORER AND  
10    LOOKING AT THE HTML VERSION OF THE DOCUMENT THAT YOU  
11    JUST SAW IN WORD.

12    Q.  CAN YOU DEMONSTRATE THAT?

13    A.  YES.  SO HERE'S THE DOCUMENT, AND IF I WANT TO LOOK  
14    AT THE HTML OF THE DOCUMENT, I CAN RIGHT CLICK AND THAT  
15    WILL BRING UP A MENU, AND FROM THAT MENU I CAN CHOOSE  
16    THE "VIEW SOURCE" OPTION.

17    Q.  JUST BEFORE YOU DO THAT, WHEN IT SAYS "SOURCE"  
18    HERE, DOES THAT MEAN SOURCE CODE?

19    A.  NO, IT DOESN'T MEAN SOURCE CODE.  IN THIS CASE  
20    "VIEW SOURCE" IS GOING TO SHOW YOU THE HTML OF THIS  
21    DOCUMENT.

22    Q.  CONTINUE.

23    A.  SO IF I CLICK ON "VIEW SOURCE," ANOTHER WINDOW WILL  
24    APPEAR , AND THIS IS THE HTML VERSION OF THAT DOCUMENT  
25    THAT WE WERE JUST LOOKING AT IN INTERNET EXPLORER.



1 Q. SO AT A GENERAL LEVEL, WHAT DOES ALL THIS TEXTUAL  
2 INFORMATION AND CODES AND SO FORTH MEAN ON THIS  
3 DOCUMENT WE'RE LOOKING AT ON THE SCREEN NOW?

4 MR. HAYES: OBJECTION, IT IS ASKING FOR AN  
5 OPINION, HE IS NOT DESIGNATED AS AN EXPERT.

6 THE COURT: OVERRULED. YOU MAY ANSWER.

7 A. THE INFORMATION HERE, THERE'S THE TEXT THAT THE  
8 USER SEES, BUT THERE'S ALSO A LOT OF INFORMATION ABOUT  
9 FORMATTING AND SMART TAGS AND OTHER INFORMATION THAT  
10 WORD NEEDS TO UNDERSTAND THE DOCUMENT AS IT'S BEEN  
11 CREATED.

12 Q. SO CAN YOU SHOW US IN THE HTML SOURCE WHERE OR WHAT  
13 PORTION OF THIS RELATES TO THE RECOGNITION OF SMART  
14 TAGS?

15 A. CERTAINLY. IF WE SCROLL DOWN TO THE BOTTOM HERE,  
16 YOU'LL SEE THAT THERE'S MY NAME "JEFF," I'M  
17 HIGHLIGHTING "JEFF," AND MY LAST NAME "REYNAR," AND  
18 THAT SURROUNDING "JEFF REYNAR" OR ACTUALLY SURROUNDING  
19 "DR. JEFF REYNAR" IN THIS CASE, IS A TAG ST1:PERSON  
20 NAME. THIS TAG BEFORE DR. JEFF REYNAR MEANS THAT THE  
21 TEXT THAT FOLLOWS IT IS A PERSON NAME, AND THAT THAT  
22 TEXT EXTENDS AS FAR AS THIS OTHER TAG, THIS CLOSING TAG  
23 FOR PERSON NAME.

24 Q. AND DOES THE HTML SOURCE ALSO INDICATE WHETHER THE  
25 -- YOUR TITLE HAS BEEN RECOGNIZED AS WELL?

1     A.   YES, IT DOES.

2     Q.   WHERE DOES IT DO THAT?

3     A.   WELL, HERE'S MY TITLE, "DR.," AND YOU CAN SEE THAT

4     RIGHT BEFORE THAT THERE'S A TAG THAT SAYS "ST2:TITLE,"

5     AND THAT IMMEDIATELY AFTER THAT THERE'S ANOTHER ONE, IT

6     LOOKS VERY SIMILAR, BUT HAS A BACK SLASH IN FRONT OF

7     IT.

8     Q.   AND FINALLY, IS THERE ANYTHING HERE IN THE HTML

9     SOURCE THAT INDICATES WHETHER THE DATE HAS BEEN

10    RECOGNIZED?

11    A.   YES.  HERE'S THE DATE, "SEPTEMBER 24, 2004."  AND

12    IMMEDIATELY BEFORE THAT DATE IT SAYS "ST1:DATE" AND HAS

13    SOME PROPERTIES ABOUT THE DATE, THE DAY AND THE MONTH.

14    AND IMMEDIATELY AFTER THE DATE, "SEPTEMBER 24, 2004,"

15    THERE'S A CLOSING TAG FOR DATE.

16    Q.   NOW, CAN WE RETURN TO THE WORD DOCUMENT FROM THIS

17    POINT?

18    A.   THE WORD DOCUMENT, CERTAINLY.

19    Q.   NOW, CAN YOU DEMONSTRATE FOR US THE "SCHEDULE

20    MEETING ACTION" FOR THE DATE SMART TAG, PLEASE.

21    A.   SURE.  SO IF I HOVER MY MOUSE OVER "SEPTEMBER 24,

22    2004," A BUTTON APPEARS, AND IF I HOVER OVER THAT

23    BUTTON AND THEN CLICK ON THE BUTTON, A MENU APPEARS .

24    AND I'LL USE MY MOUSE TO SELECT "SCHEDULE A MEETING,"

25    AND CLICK ON IT.  AND THIS HAS BROUGHT UP A MEETING

1       REQUEST WINDOW FROM OUTLOOK.

2       Q.   NOW, I NOTICE IN THE MEETING REQUEST WINDOW THE

3       TIME "2:30 P.M." HAS BEEN PUT IN AS THE START TIME; IS

4       THAT RIGHT?

5       A.   THAT'S RIGHT, DOWN HERE.

6       Q.   YOU DIDN'T HAVE TO TYPE THAT IN, DID YOU?

7       A.   NO, I DIDN'T.

8       Q.   DOES THE PROGRAM DO THAT FOR YOU?

9       A.   THE PROGRAM FILLED THAT IN BECAUSE OF THE TIME

10      SMART TAG NEAR THE DATE.

11      Q.   DOES THAT MEAN THAT THE PROGRAM ANALYZED THE

12      DOCUMENT AFTER YOU SELECTED THE "SCHEDULE MEETING

13      ACTION," IN ORDER TO FIND THE TIME?

14      A.   NO, IT DIDN'T.  THE TIME HAD ALREADY BEEN LABELED,

15      JUST LIKE MY NAME AND THE DATE HAD ALREADY BEEN

16      LABELED.

17      Q.   SO HOW ABOUT THE NAME, "JEFF REYNAR," DID THE

18      PROGRAM FILL THAT IN FOR YOU ALSO?

19      A.   YES, IT DID.

20      Q.   DID THE PROGRAM, IN ORDER TO DO THAT, DID IT HAVE

21      TO ANALYZE THE DOCUMENT AGAIN TO FIND THE NAME, "JEFF

22      REYNAR"?

23      A.   NO, IT WAS LARGELY THE SAME AS THE TIME.  THE NAME

24      HAD BEEN LABELED AS A SMART TAG OF TYPE PERSON NAME,

25      AND THE ACTION FOR SCHEDULING A MEETING NOTICED THAT

1        THAT LABELED SMART TAG WAS NEARBY AND INCLUDED IT.

2        Q.   NOW, IF YOU WERE TO GO BACK AND LOOK AGAIN AT THE

3        HTML SOURCE FOR THIS DOCUMENT AFTER YOU TOOK THIS

4        ACTION, WOULD IT LOOK ANY DIFFERENT?

5        A.   NO, IT WOULD BE EXACTLY THE SAME.

6        Q.   CAN YOU SHOW US THAT QUICKLY, PLEASE.

7        A.   SURE.  I'M GOING TO CLOSE THIS WINDOW, I'M ALSO

8        GOING TO GO AND CLOSE THE NOTE PAD WINDOW THAT SHOWED

9        THE HTML JUST SO THERE'S --  WELL, I CAN LEAVE THAT

10       OPEN AND WE CAN COMPARE, BUT I WILL CLOSE THIS WEB

11       BROWSER.

12                SO HERE WE ARE IN WORD AGAIN, AND I'M GOING TO

13       GO THROUGH THE SAME SET OF STEPS AS BEFORE OF OPENING

14       THE FILE MENU, CHOOSING "WEB PAGE PREVIEW," SO THIS HAS

15       OPENED THE WEB BROWSER FOR THAT SAME DOCUMENT.

16                THE DOCUMENT ITSELF LOOKS LARGELY THE SAME, AND

17       IF WE VIEW SOURCE, THAT SOURCE WILL BE IDENTICAL AS

18       WELL.  SO WE CAN SCROLL DOWN TO THE END AND SEE THAT,

19       FOR INSTANCE, MY NAME IS STILL LABELED AS A PERSON

20       SMART TAG HERE, AS YOU CAN SEE WITH THIS ST1:PERSON

21       NAME.  I CAN ALSO SEE THAT DATE HERE IS LABELED THE

22       SAME WAY IT WAS BEFORE, AS AN ST1:DATE.  AND YOU CAN

23       SEE THAT THE TIME, 2:30 P.M., IS LABELED AS A TIME,

24       JUST LIKE IT WAS BEFORE.

25                THE COURT:  SPEAKING OF TIME, THAT'S ALL THE

1 TIME WE HAVE TODAY, MR. SCHERKENBACH.

2 MEMBERS OF THE JURY MAY BE EXCUSED UNTIL  
3 TOMORROW MORNING AT 10:00.

4 (JURY EXCUSED)

5 YOU MAY STEP DOWN, DR. REYNAR.

6 THE WITNESS: THANK YOU.

7 (WITNESS EXCUSED)

8 THE COURT: PLEASE BE SEATED, LADIES AND  
9 GENTLEMEN.

10 COUNSEL, BEFORE WE ADJOURN NOW, I JUST WANT TO  
11 CONFIRM THAT, I GUESS, YOU, MR. SCHERKENBACH, HAVE TOLD  
12 MR. HAYES OR ARE ABOUT TO TELL HIM WHO YOUR WITNESSES  
13 WILL BE TOMORROW AND WHAT EXHIBITS YOU INTEND TO OFFER?

14 MR. SCHERKENBACH: YES, YOUR HONOR. OUR  
15 WITNESSES TOMORROW ARE MR. BLOCK, MR. MILLER, AND  
16 DR. CROFT. WE HAVE PROVIDED THE EXHIBITS FOR MR. BLOCK  
17 AND MR. MILLER. WE WILL PROVIDE THE EXHIBIT LIST FOR  
18 DR. CROFT SHORTLY AFTER WE RETURN TODAY.

19 THE COURT: MR. HAYES, DO YOU EXPECT TO OFFER  
20 ANY EXHIBITS TOMORROW?

21 MR. HAYES: WITH RESPECT TO BLOCK AND MILLER, I  
22 DON'T KNOW. CROFT, I DON'T KNOW. I HAVEN'T READ HIS  
23 EXHIBITS, SO I DON'T KNOW. IF I DO, I WILL GIVE IT TO  
24 FRANK ASAP.

25 THE COURT: WHEN WOULD YOU BE GIVING THOSE TO

1 HIM?

2 MR. HAYES: I WOULD BE GIVING IT TO HIM WITHIN  
3 AN HOUR.

4 THE COURT: ARE THERE ANY ISSUES THAT COUNSEL  
5 ANTICIPATE THAT NEED TO BE RESOLVED BEFORE WE BEGIN  
6 TOMORROW?

7 MR. HAYES: JUST THE STUFF I WENT OVER WITH YOU,  
8 JUDGE, THE POTENTIALITY THAT I MAY ASK YOU WITH RESPECT  
9 TO EITHER BLOCK OR MILLER OR BOTH, TO VOIR DIRE THEM  
10 BEFORE THEY START DOING DEMOS OF PRIOR ART FOR ONE, TO  
11 ESTABLISH WITH ONE OF THEM THAT THEY DIDN'T GIVE US A  
12 SOURCE CODE DESPITE THE FACT THAT THEY WERE SUBPOENAED  
13 TO DO IT. AND THE OTHER ONE, IF HE HAS A DISC, HE  
14 DOESN'T KNOW WHERE IT COMES FROM. THAT'S THE BIGGEST  
15 PROBLEM OF PRIOR ART IS THAT THEY BRING IN THE DISC,  
16 BUT SOMEONE HAS TO SAY THE THING WAS PRIOR TO HEDLOY'S  
17 PATENT. SO, I DON'T KNOW --

18 THE COURT: WHY WOULD WE NEED A VOIR DIRE FOR  
19 THAT? WOULDN'T THAT BE PART OF THE FOUNDATION THAT  
20 MR. SCHERKENBACH WOULD HAVE TO LAY BEFORE HE CAN ASK  
21 THOSE QUESTIONS?

22 MR. HAYES: YES, IT WOULD, THAT'S CORRECT,  
23 JUDGE.

24 THE COURT: WELL, IS THERE ANY DISPUTE ABOUT  
25 WHETHER, WITHOUT PASSING ON WHETHER THESE CODES ARE

1       REQUIRED, IS THERE ANY DISPUTE AS TO WHETHER THEY HAVE  
2       OR HAVE NOT BEEN PROVIDED?

3               MR. SCHERKENBACH: I DON'T BELIEVE SO, IF I KNOW  
4       WHAT MR. HAYES IS REFERRING TO. I DON'T THINK THERE IS  
5       ANY DISPUTE, ABOUT WHAT, IN FACT, HAPPENED.

6               MR. HAYES: MR. BLOCK IS HIS FIRST WITNESS ON  
7       THE -- I GET THESE CONFUSED, JUDGE -- ADDRESSMATE AND  
8       HE WAS SUBPOENAED. SUBPOENA -- WE REQUESTED HIM TO  
9       PROVIDE THIS INFORMATION AND MY UNDERSTANDING IS HE  
10      CONSIDERS IT, FOR WHATEVER REASON, PROPRIETARY TO  
11      HIMSELF, WOULDN'T GIVE IT TO ME AND I DON'T THINK HE  
12      GAVE IT TO FISH EITHER.

13              THE COURT: WHEN YOU SAY THIS INFORMATION, WHAT  
14      INFORMATION?

15              MR. HAYES: THE SOURCE CODE FOR THE PROGRAM  
16      THAT'S ON THE DISC THAT HE INTENDS TO PLAY.

17              THE COURT: AND WHAT DISC IS THAT?

18              MR. HAYES: THAT WOULD BE THE ADDRESSMATE DISC  
19      -- ADDRESSMATE PLUS DISC. SO THAT'S ONE ISSUE.

20              THE COURT: DO YOU HAVE ANYTHING TO SAY ON THAT,  
21      MR. SCHERKENBACH?

22              MR. SCHERKENBACH: WELL, IF I CAN DEFER TO  
23      MR. SMITH, WHO KNOWS PERSONALLY WHAT, IN FACT,  
24      OCCURRED. BUT ONE OBSERVATION THAT I'LL MAKE IS THAT  
25      MR. BLOCK ISN'T GOING TO BE TALKING ABOUT SOURCE CODE

1       AT ALL.  SO I DON'T KNOW THAT WE WOULD EVER GET INTO  
2       THIS.  BUT IF IT IS MATERIAL TO KNOW WHAT THE INS AND  
3       OUTS OF THE SUBPOENA WERE, MR. SMITH IS THE PERSON WHO  
4       KNOWS THE ANSWERS TO THOSE QUESTIONS.

5               MR. SMITH:  YOUR HONOR, YES, IN FACT, THERE WAS  
6       A SUBPOENA FOR DOCUMENTS FROM MR. BLOCK AND WE PRODUCED  
7       DOCUMENTS AND WE PLAN ON SHOWING TOMORROW THE ACTUAL  
8       SOFTWARE THAT WAS PRODUCED TO ARENDI IN THIS CASE.  WE  
9       BELIEVE -- THE DEPOSITION IS THAT SOURCE CODE WAS  
10      REQUESTED AS PART OF A SUBPOENA.  I'VE GOT A COPY OF IT  
11      HERE, I WOULD BE HAPPY TO --

12             THE COURT:  IS THIS A TRIAL SUBPOENA OR  
13      DEPOSITION?

14             MR. SMITH:  NO, THIS WAS PRIOR TO A DEPOSITION  
15      OF MR. BLOCK.

16             THE COURT:  SO MR. BLOCK WAS SUBPOENAED TO BE  
17      DEPOSED AND TO BRING WITH -- IT WAS A SUBPOENA DUCES  
18      TECUM, IN OTHER WORDS?

19             MR. HAYES:  YES, SIR, TO BRING EVERYTHING THAT  
20      HE IS TO RELY UPON WITH RESPECT TO HIS TESTIMONY AND  
21      OPINIONS.  HE TESTIFIED THAT HE RELIED ON PORTIONS OF  
22      THE SOURCE CODE.  AND WE HAVEN'T GOT THE SOURCE CODE.  
23      I COULD DIG THAT OUT IF YOU -- TOMORROW -- GIVE YOU THE  
24      SPECIFIC CITES OF THAT AND GIVE YOU THE SUBPOENA IF YOU  
25      WANTED TO RESOLVE IT TOMORROW MORNING, JUDGE?



1           MR. SMITH: YOUR HONOR, WE HAVE A COPY OF THE  
2 SUBPOENA HERE IF YOU WANT TO TAKE A LOOK AT IT.

3           THE COURT: WHAT IS THE ISSUE HERE? IS THE  
4 ISSUE WHETHER THE SUBPOENA COVERED THE SOURCE CODES OR  
5 IS THE ISSUE WHETHER HE WAS REQUIRED TO PRODUCE THE  
6 SOURCE CODES?

7           MR. SMITH: WE BELIEVE THAT THE SOURCE CODE  
8 ISN'T RELEVANT. THE SUBPOENA ACTUALLY, WE BELIEVE,  
9 DOESN'T CALL FOR IT. THE FIRST TIME IT EVER CAME UP,  
10 ANY SOURCE CODE, IS AT HIS DEPOSITION WHERE THEY BEGAN  
11 TO QUESTION HIM ABOUT THE SOURCE CODE FOR THE PRODUCT  
12 THAT WE PRODUCED TO ARENDI. THAT WAS THE FIRST TIME IT  
13 CAME UP. AT THE DEPOSITION THEY NEVER REQUESTED IT.  
14 AFTER THE DEPOSITION, THEY NEVER REQUESTED IT AND  
15 SAID --

16          THE COURT: THEY SAID WHAT?

17          MR. SMITH: THEY NEVER WANTED THE SOURCE CODE  
18 FOR THIS PRODUCT. SO THERE'S NEVER REALLY A DISPUTE.  
19 I THINK, AS FAR AS I'M AWARE, THE FIRST TIME WAS AFTER  
20 THE DEPOSITION WHEN WE HEARD THAT THEY'RE NOW SAYING,  
21 WELL, MR. BLOCK CAN'T EVEN TESTIFY ABOUT CERTAIN THINGS  
22 BECAUSE SOURCE CODE WASN'T PROVIDED TO THEM.

23          MR. BLOCK IS GOING TO BE TESTIFYING ABOUT THE  
24 ACTUAL SOFTWARE THAT WE PROVIDED TO THEM AND THAT HE  
25 WAS DEPOSED ON.

1           MR. HAYES: THAT'S FINE, JUDGE, BUT HERE'S THE  
2 PROBLEM, WHAT IT'S GOING TO BOIL DOWN TO. THEY ARE  
3 GOING TO PUT BLOCK ON THE STAND, HE'S GOING TO GO  
4 YADDA, YADDA, YADDA, THIS IS HOW IT WORKS. AND DOES IT  
5 ANALYZE, AND HE'S GOING TO SAY WHATEVER HE SAYS, YES.

6           WELL, THE FACT IS, QUESTION, WHERE IS THE  
7 ANALYSIS, THE GUTS UNDER THE HOOD SHOWING THE ANALYSIS,  
8 THE SOURCE CODE? I DON'T HAVE THE SOURCE CODE TO GIVE  
9 TO KLAUSNER TO REBUT IT. I MEAN ANYBODY COULD SAY  
10 THESE THINGS ANALYZE, DON'T ANALYZE, OR WHATEVER. YOU  
11 KNOW, I MEAN YOU'VE GOT TO GET UNDER THE HOOD.

12           AND HE WAS SUBPOENAED, THE SUBPOENA COVERED, I  
13 BELIEVE, COVERED THE SOURCE CODE. HE REFUSED TO GIVE  
14 IT TO US AND, IN FACT, HE TOLD US, I THINK, HE WOULDN'T  
15 GIVE IT ALL TO FISH EITHER. I DON'T KNOW WHY HE'S  
16 DOING THIS, BUT THAT'S THE RUB OF IT.

17           NOW, IF HE TESTIFIES, YEP, THIS IS HOW IT IS,  
18 YOU POP THIS IN, YOU POP THAT IN, YOU POP THIS IN, THIS  
19 COMES UP, THAT COMES UP, THIS DOESN'T COME UP, BUT WHEN  
20 HE STARTS SAYING, BUT YOU LOOK HERE AND THAT'S  
21 ANALYZING, HOW CAN WE DEFEND OURSELVES, THE  
22 UNDER-THE-HOOD, SHALL WE SAY, DIAGRAM TO DISPUTE THAT?

23           THE COURT: WELL, AGAIN, I SORT OF FEEL LIKE I  
24 CAME IN IN THE MIDDLE OF THE CONVERSATION HERE. BUT IT  
25 WOULD SEEM TO ME THAT -- TELL ME, COUNSEL, IF YOU

1 DISAGREE WITH THIS, BUT EITHER THE SOURCE CODE IS  
2 NECESSARY TO DETERMINE WHETHER ADDRESSMATE ANALYZES  
3 WHATEVER IT IS YOU'RE GOING TO TRY TO SHOW THAT IT  
4 ANALYZES, OR IT'S NOT IN DETERMINING WITHOUT REFERENCE  
5 TO THE SOURCE CODE WHETHER OR NOT YOU CAN ANALYZE. IF  
6 IT IS NECESSARY TO DETERMINE WHETHER ADDRESSMATE  
7 ANALYZES, THEN I DON'T KNOW HOW HE COULD POSSIBLY  
8 TESTIFY WHETHER IT DOES OR DOESN'T WITHOUT MAKING THE  
9 SOURCE CODE AVAILABLE. IF IT DOESN'T REQUIRE RECOURSE  
10 TO THE SOURCE CODE, THEN I DON'T KNOW WHAT THE  
11 RELEVANCE OF THE SOURCE CODE WOULD BE IN  
12 CROSS-EXAMINING HIM OR HAVING YOUR EXPERT SEEK TO REBUT  
13 WHAT HE SAYS.

14 MR. HAYES: ABSOLUTELY CORRECT.

15 THE COURT: ALL RIGHT. SO THAT QUESTION OUGHT  
16 TO BE RESOLVED. YOU WANT TO VOIR DIRE HIM ON THAT  
17 QUESTION AS TO WHETHER THE SOURCE CODE IS NECESSARY TO  
18 DETERMINE WHETHER ADDRESSMATE ANALYZES; IS THAT WHAT  
19 YOU'RE ASKING?

20 MR. HAYES: I'LL LET MY BROTHER PUT ON THE  
21 EVIDENCE, BECAUSE I KNOW HE'S GOING TO SAY NO, SO THEN  
22 I'M STUCK. I MEAN, HE'S GOING TO SAY NO, THEN WHAT DO  
23 I HAVE? I'M NOT GOING TO PUT KLAUSNER UP TO SAY YES IT  
24 IS, YES IT IS, NO IT ISN'T, HAVE A LITTLE  
25 MINI-HEARING. HOW ABOUT WE PLAY IT AS IT GOES

1       AND THEN I'LL JUST OBJECT ON THE SENSE OF  
2       AUTHENTICATION OR FOUNDATION?

3               THE COURT:   ALL RIGHT.

4               MR. HAYES:   OR I CAN CROSS HIM AND, IF, IN FACT,  
5       ON THE CROSS HE ADMITS THAT, YES, IN ORDER TO KNOW, IN  
6       FACT, WHETHER THIS THING ANALYZES OR NOT YOU NEED THE  
7       SOURCE CODE, IF HE SAYS YES, WHICH UNDOUBTEDLY HE  
8       WON'T, BECAUSE MY BROTHER IS LISTENING, BUT IF HE DID  
9       SAY YES, THEN WE CAN STRIKE HIS WHOLE TESTIMONY AND  
10      MOVE ON.

11              THE COURT:   SO THERE IS NO ISSUE NOW TO BE  
12      RESOLVED BEFORE WE START TOMORROW?

13              MR. SMITH:   APPARENTLY NOT, YOUR HONOR.

14              MR. HAYES:   I HATE TO BRING UP MILLER, BUT  
15      MILLER IS THE MAN THAT HAS, AGAIN, IN THE MILLER THING  
16      WHICH IS THE APPLE DATA DETECTOR, ON THAT ONE, MY  
17      UNDERSTANDING IS HIS THOUGHTS OF ANALYSIS ARE EMBEDDED  
18      IN A PROPRIETARY CODE THAT NO ONE HAS SEEN AND THAT HE  
19      HAS NO PERSONAL KNOWLEDGE THEREOF.   SO I JUST LEAVE MY  
20      BROTHER TO ESTABLISH THE FOUNDATION.   BUT I'M JUST SORT  
21      OF -- I DON'T THINK WE HAVE TO RESOLVE, THAT'S SORT OF  
22      AN EVIDENTIARY THING.   I'M JUST SORT OF TIPPING YOU  
23      OFF, IF YOU WANT TO KNOW A POSSIBLE DISPUTE THAT'S  
24      GOING TO ARISE THAT'S UP THERE.

25              THE COURT:   WELL, THE INITIAL QUESTION IS THE

1 SAME, ISN'T IT, WHETHER ONE NEEDS THE SOURCE CODE IN  
2 ORDER TO DETERMINE WHETHER APPLE DATA ANALYZES?

3 MR. HAYES: THAT'S THE FIRST FUNDAMENTAL  
4 QUESTION. THE SECOND QUESTION IS HOW COULD IT BE PRIOR  
5 ART ON THE ISSUE OF ANALYSIS IF IT'S NOT IN THE PUBLIC  
6 DOMAIN. IF THIS IS A PIECE OF PROPRIETARY TECHNOLOGY  
7 IT MAY BE A CONCERN. AS IT'S OBVIOUSLY NOT PUBLISHED,  
8 PUBLISHED TO THE WORLD IF I CAN'T EVEN GET IT DURING  
9 THE TRIAL. BUT THAT SAID, I THINK WE CAN OBJECT WHEN  
10 IT COMES AND --

11 THE COURT: ALL RIGHT, JUST BE SURE YOU MAKE  
12 YOUR GROUNDS FOR OBJECTION CLEAR, AND I'LL RULE ON THE  
13 OBJECTIONS, THEN, AS THEY ARE MADE.

14 MR. HAYES: YES, SIR.

15 MR. SMITH: THANK YOU, YOUR HONOR.

16 THE COURT: COURT WILL BE ADJOURNED UNTIL  
17 TOMORROW MORNING.

18 (ADJOURNED 4:45 P.M.)

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C E R T I F I C A T I O N

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I, ANGELA M. GALLOGLY, RPR, DO HEREBY

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CERTIFY THAT THE FOREGOING PAGES ARE A TRUE AND

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ACCURATE TRANSCRIPTION OF MY STENOGRAPHIC NOTES IN THE

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ABOVE-ENTITLED CASE.

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ANGELA M. GALLOGLY, RPR

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